

EXHIBIT "A"

LIFE PRISONER: PAROLE CONSIDERATION
PROPOSED DECISION (BPT §2041)

I. [] PAROLE DENIED

If this proposed decision denying parole is approved, the Board will send you a copy of the approved decision, including the reasons for denial of parole, within 30 days of the hearing.

II. [✓] PAROLE GRANTED

A. Base Period of Confinement 180 Months

A 334928 1 Murder 1st
Case No. Count No. Offense

B. Firearm Enhancement + 24 Months

C. Other Crimes Total + Months

A 334928 2 36 mos.
Case No. Count No. Offense

A 334928 3 12 mos.
Case No. Count No. Offense

Case No. Count No. Offense mos.

D. Total Term = 252 Months

E. Postconviction Credit From 3/24/79 To 8/3/88 - 30 Months
(Date) (Date)

F. Total Period of Confinement = 222 Months

The period of confinement indicated is a tentative decision proposed by this panel. The decision will be reviewed pursuant to BPT §2041, and, if approved, a copy of the approved decision will be sent to you within 30 days. At that time appropriate pre-prison credits will be applied and a parole release date computed.

You will not engage in any conduct specified in BPT §2451. Such conduct may result in rescission or postponement of your parole date.

III. If the proposed decision denying or granting parole is disapproved, you will receive a copy of the proposed decision and the reasons for disapproval. You will then receive a copy of the modified decision or will be scheduled for a new hearing, as appropriate.

PANEL HEARING CASE			
Name	<i>Albert M. Ledy</i>	Date	<i>8/3/88</i>
Name	<i>Maureen O'Connor</i>	Date	<i>8/3/88</i>
Name	<i>Calvin Brown</i>	Date	<i>8/3/88</i>
NAME	CDC NUMBER	INSTITUTION	HEARING DATE
HERNANDEZ, PETER	C-03015	CMC-E	8-3-88

PC §3041(a) provides that the BPT shall meet with persons sentenced under PC §1168 and shall normally set a parole release date unless, pursuant to PC §3041(b), the Board determines that a parole date cannot be fixed at this hearing.

This hearing is conducted pursuant to the California Administrative Code (CAC), Division 2, Chapter 3, Article 5, which sets forth parole consideration criteria and guidelines for life prisoners implementing PC §3041.

Statement of Facts

The prisoner was convicted of first degree murder in the shooting death of victim Tony Sanchez. The prisoner went through three trials and was committed to California Department of Corrections (CDC) nearly two years after the murder. The prisoner was arrested as a result of an investigation into a triple shooting which occurred April 25, 1977, at about 9:10 p.m., near 1185 W. 24th Street in Los Angeles. Three victims, Tony Sanchez, Eladoro Rosales and Santo Rodriguez, were accosted by the prisoner and a crime partner while standing in front of the 24th Street address. After a few words between them, the prisoner drew a handgun and began firing. Victim Sanchez was immediately mortally wounded. Victim Rodriguez was shot in the left thigh, but turned and ran. Victim Rosales was subsequently

shot in the buttocks as he and Rodriquez fled on foot. Victim Rosales died shortly after the shooting, but his death was not connected to this incident or the prisoner.

Parole Suitability

CAC §2281(a) requires that the panel first determine whether the prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison. CAC §2281(c) sets forth circumstances tending to show unsuitability and CAC §2281(d) sets forth circumstances tending to show suitability. These regulations are guidelines only.

The panel relied on the following circumstances in determining whether or not the prisoner is suitable for parole:

1. The prisoner has no juvenile record of assaulting others;
2. The prisoner has a stable social history as exhibited by his reasonably stable relationships with others;
3. While imprisoned, the prisoner enhanced his ability to function within the law upon release through

participation in educational programs; self-help and therapy programs, i.e., Alcoholics Anonymous (AA) and Narcotics Anonymous (NA); vocational programs, and institutional job assignments;

4. Motivation for crime. The crime was committed as a result of significant stress in the prisoner's life;

5. The prisoner lacks a significant criminal history of violent crime;

6. The prisoner's maturation reduces the probability of recidivism;

7. The prisoner has realistic parole plans which include family support;

8. The prisoner has maintained close family ties while imprisoned via letters and some visits;

9. The prisoner's positive institutional behavior which indicates significant improvement in self-control

10. The prisoner shows signs of remorse and gives indications that he understands the nature and magnitude of the offense. He accepts responsibility for his criminal behavior and he has the desire to change toward good citizenship;

11. The Category X Diagnostic Unit Evaluation dated June 28, 1988, is favorable.

Based on the information contained in the record and considered at this hearing, the panel states as required by PC §3043 that the prisoner would not pose a threat to public safety if released on parole.

Therefore, the prisoner is found suitable for a projected release date.

Base Term of Confinement

PC §3041(a) provides that if a prisoner is found suitable for parole, the Board shall set a parole release date in a manner "...that will provide uniform terms for offenses of a similar gravity and magnitude in respect to their threat to the public." CAC §§2282-2292 implement this policy. CAC §2282 requires that a term be set for the base offense, the most serious of all life offenses for which the prisoner has been committed to prison. Suggested base terms are set forth in CAC §§2282(b) and 2403(c). CAC §§2283 and 2284 set forth circumstances in aggravation and mitigation respectively. All of these regulations are guidelines only.

The term is derived from the matrix at BPT Rules (2282-B) (2282-C), Categories III-C, in that there was no prior relationship with the victim and death was immediate.

The panel assessed 180 months for the base offense and noted that this is the middle term.

Firearm Enhancement

CAC §2285 provides for an additional term of 2 years if the prisoner personally used a firearm in the commission of any life crime unless the panel states specific reasons for not adding enhancement.

The term set forth above is increased by 2 years for the use of a firearm in the offense.

Non-Life Commitment - Principal Term (BPT§2286(b)(1):

<u>Offense</u>	<u>PC§</u>	<u>Case #</u>	<u>Ct. #</u>	<u>Time</u> <u>Assessed</u>
Assault with intent to murder	217	A334928	2	<u>36</u>
TOTAL				36

The panel did not enhance for firearm; already did so for the same gun on the murder, and felt the term was sufficient.

Non-Life Commitments; Subordinate Terms:

<u>Offenses</u>	<u>PC §</u>	<u>Case #</u>	<u>Count</u>	<u>Time</u> <u>Assessed</u>
Assault with intent to murder	217		3	<u>12</u>
TOTAL				12

The panel did not enhance for the prior grand theft auto because the prisoner was drunk and he received probation and a \$35 fine.

Post-Conviction Behavior

CAC §2290 establishes procedures for the application of credit for good behavior in prison which may be used to reduce the term or advance a parole date already established.

Statements submitted into prisoner's record pursuant to PC §§1203.01 and 3042 have been considered by the Board panel in this hearing.

March 23, 1979 to March 1980:

MONTHS

RCC-CIM-SQ, vocational electrical maintenance 5/79 - 12/79, to school full time, group therapy, and disciplinary free -

4

March 1980 to March 1981:

SQ-Med A, school full time, Catholic chapel worker, group therapy, and disciplinary free-

4

March 1981 to March 1982:

7/20/87, received a California Department of Corrections (CDC) disciplinary (115) for marijuana

possession, 6/12/87, graduated from
high school, Mens Advisory Council
(MAN) vice president, janitor, self-
help-Navy video-with laudatories -

0

March 1982 to March 1983:

MCF, captains clerk with
laudatories, assigned dental clinic,
MAC vice president, college courses -

4

March 1983 to March 1984:

CTF, Medium A, received a CDC
115 for force and violence, maintenance
work crew, vocational TV prod. -

0

March 1984 to March 1985:

CTF, Vocational TV prod, one year
completed, community awareness group,
self-help, and disciplinary free -

4

March 1985 to March 1986:

CTF-CMC 12/85, vocational TV prod.
transferred to procurement clerk, and
disciplinary free -

4

March 1986 to March 1987:

CMC, vocational electronics,
data processing, participation in AA
and substance abuse group, and

disciplinary free - 4

March 1987 to March 1988:

CMC, vocational electrinoes,
data processing, participation in AA
and substance abuse group, and

disciplinary free - 4

March 1988 to August 3, 1988:

CMC-Category he participated in
the Category X program, AA, and
vocational data processing -

2

TOTAL 30

Order

PC §3041.5(b)(1) provides that within ten days following any meeting where a parole date has been set, the Board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

The total period of confinement pursuant to this decision is composed of: 252 months Base Term and enhancements; less 30 months post-conviction credits for a total of 222 months.

The prisoner shall not engage in the conduct specified in CAC §2451. Such conduct may result in rescission or

postponement of the parole date.

Parole Conditions

PC §3053 provides that the BPT, upon granting any parole to any prisoner, may impose on the parole such conditions as it may deem proper.

The prisoner is to be released pursuant to the notice and general conditions of parole established in CAC §§2511 & 2512.

In addition, the prisoner is subject to the following Special Conditions of Parole pursuant to CAC §2513:

1. Do not use alcoholic beverages;
2. Participate in anti-narcotic testing.

EFFECTIVE DATE OF THIS DECISION _____.

HERNANDEZ, P. C-03015
ld

-10-

8/3/88

MISCELLANEOUS DECISIONS

FACTS

- 8-3-88 - Life parole consideration hearing conducted at California Mens Colony-East. Parole date granted.
- 9/19/88 - Decision Review Committee met and vacated decision of 8/3/88 and ordered new hearing.

RECOMMENDATION(S)

Schedule for new hearing as soon as possible on next available calendar.

STAFF (Name)	TITLE	DATE
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DECISION(S)

1.

2.

3.

PANEL HEARING CASE

DECISION DATE

NAME	<i>Robert L. Patterson</i>	10/21/88
NAME		

NAME

NAME

NUMBER

INSTITUTION OR REGION (UNIT)

HERNANDEZ, P.

B-03015
C

CMC-EAST

☐ APPROVED ☒ REFER TO DECISION REVIEW COMMITTEE ☐ REFER TO RECONSIDERATION PANEL

INMATE Hernandez, Peter	CDC NUMBER C-03015
TYPE OF HEARING Life	DATE OF HEARING August 3, 1988

The Decision Review Unit has completed a review of the above hearing and has identified the following issues which need further review: (Attach page 2 if necessary.)

1. The panel, when dictating the "legal status," set forth that the murder first conviction (Count 1) was while armed (12022 PC) and that he used a firearm in the commission of the offense (12022.5 PC).

Recommendation: That the "12022/12022.5 "be stricken.

a) We believe, however, that notwithstanding the action of the court, the Board may, pursuant to OCR §2285, upon finding that the inmate personally used a firearm in the (a) life crime, the panel may properly assess an additional 24 month enhancement.

2. We also note that the panel chose the base matrix of "III-C" stating, "...that there was no prior relationship with the victim and the death was immediate. While it is true that there was no prior relationship (known), if death was immediate (then the BPT matrix) III B appears to be the appropriate matrix to use. III C relates to "severe trauma."

3. Number 5 for justification, "...prisoner lacks a significant criminal history of violent crime," while this appears to be correct, we discovered during our review that the inmate's juvenile record was destroyed (page 7 Institutional Programming Summary). Accordingly, and RECOMMENDATION

See BPT 1139 Modification Ordered.

DECISION REVIEW UNIT SIGNATURE		DATE
WILLIAM V. CASHDOLLAR		August 26, 1988
REVIEWED BY LEGAL COUNSEL	LEGAL COUNSEL INITIALS	RESULT
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> CONCUR <input type="checkbox"/> DISSENT
LEGAL COUNSEL COMMENTS.		

I have reviewed the above-referenced file and ☒ concur ☐ dissent with the Decision Review Unit.

COMMENTS
Refer to Decision Review Committee

CHIEF DEPUTY COMMISSIONER SIGNATURE	DATE
<i>James B. Dowling</i>	9/6/88

BPT 1139 (4/87) Page 1 of 2
 BOARD OF PRISON TERMS
 REVIEW OF PROPOSED DECISION
 STATE OF CALIFORNIA

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

DECISION REVIEW COMMITTEE REVIEW OF PROPOSED DECISION

INMATE Hernandez, Peter	CDC NUMBER C-03015
TYPE OF HEARING Life	DATE OF HEARING August 3, 1988
<input type="checkbox"/> Affirm original decision <input checked="" type="checkbox"/> Schedule new hearing <input type="checkbox"/> Modify decision	

MODIFICATION ORDERED: (Panel - Please Mark Appropriate Box Above)

1. Strike the "12022/12022.5 PC" from Count 1, page one of the proposed decision, under the category "Legal Status."
2. Since the matrix of III C is "14-16-18" and III B is "13-15-17," we order that this entire matter be reheard so that all circumstances may be given proper weight. We recommend that the rehearing panel, absent establishing cause not to, that it seriously consider following the intent of the first panel with respect to the granting of the date.
3. We order that the rehearing panel determine the appropriateness of relying on the absence of a violent history since we are informed that the inmate's (24 years old at entry into prison) juvenile record had been destroyed and therefore is not available to rely on.
4. We order a new hearing.

SUPPORTIVE REASONING FOR DECISION:

1. To comply with the court's finding.
2. To provide the Board with adequate discretion to structure a sentence in keeping with the facts of this case.
3. To provide for correct result.
4. To allow the Board the ability to fully consider all aspects of this case.

<i>Rubio Costa</i>	9-19-88	<input checked="" type="checkbox"/> Concur
COMMISSIONER SIGNATURE	DATE	<input checked="" type="checkbox"/> CONCUR <input type="checkbox"/> DISSENT
<i>James H. Lewis</i>	9-19-88	<input checked="" type="checkbox"/> CONCUR <input type="checkbox"/> DISSENT
COMMISSIONER D. C. SIGNATURE	DATE	<input checked="" type="checkbox"/> CONCUR <input type="checkbox"/> DISSENT
<i>W. J. Anderson</i>		<input type="checkbox"/> CONCUR <input type="checkbox"/> DISSENT
COMMISSIONER D. C. SIGNATURE	DATE	<input type="checkbox"/> CONCUR <input type="checkbox"/> DISSENT

I dissent from the majority for the following reasons:

SIGNATURE

DATE

REVIEW OF PROPOSED DECISION

(Continued)

absent such a record, reliance on such a "fact" should be reviewed by the Decision Review Committee.

4. Calculation error - (Count 3 only; may wish to consider Count 2).

	<u>Crime</u>		<u>Panel Calculation</u>		<u>Recommended Calculation</u>
Count 1	187	Base	180		180
	12022	(BPT 2285)	24		24
	12022.5				
Count 2	217	Principal	36	Principal	36
	12022.5		0		(24) ¹
Count 3	217	Subordinate	12	Subordinate	12
	12022.5		0 ²		8
			252 months		264 months
					(+12 months)

Note: if Panel calculation accepted, then only error relate to Count 3, regarding 12022.5.

1/ Panel did not enhance for firearm; already did so for the same gun on the murder, and felt the term was sufficient. This is entirely appropriate, and we only place the "24" within the Recommended Calculation category to (1) allow the Decision Review Committee the opportunity to review, but more importantly (2) to establish that it is entirely appropriate to assess a 24 month enhancement under PC 1170.1 as the enhancement relates to a "violent felony" (PC 667. and may be used for the life crime and the non-life crime.

2/ Panel failed to mention any reason to mitigate or to not impose.

LIFE PRISONER DECISION F

PERIOD OF CONFINEMENT

(RECORDS OFFICER USE ONLY)

Adjusted Period of Confinement	YR	MO	DAY
	17	11	10
Reception Date (See BPT §2289)	+	79	3 23
At Large Time	+		
PAROLE DATE	=	97	-3 -5

MISCELLANEOUS

*parole granted
Keep at CMC until finishes Vocation Training*

Place on appropriate Progress Calendar PH 8/9

PENAL CODE NOTICES

SECTION 3042



SENT

June 30, 1988

(DATE)

COMMITMENT OFFENSE

187PC

Murder 1st

(CODE SECTION)

(TITLE)

A334928

Ct. 1

(CASE NUMBER)

(COUNT NUMBER)

Date Received by CDC

3-23-79

Controlling MEPD

9-3-85

Type of Hearing



INITIAL



SUBSEQUENT

3

(HEARING NO.)

If Subsequent Hearing, Date of Last Hearing

8-6-87

Department Representative

Counsel for Prisoner

Linda Clark

Address

93561

102 South Robinson, PO Box 26, Tehachapi, CA

District Attorney Representative

County

L.A.

PAROLE HEARING CALENDAR

The following represents the findings, determination, and order of the Board of Prison Terms, State of California.

By:

Presiding (Name)

Alfred M. Ledy

Date

7/3

Concurring (Name)

Chauven Orosco

Date

7/3

Concurring (Name)

Eled Brown

Date

8/2

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
HERNANDEZ, PETER	C-03015	CMC-E	8/88	8-3-88

PERIOD OF CONFINEMENT

(RECORDS OFFICER USE ONLY)

	YR	MO	DAY
Adjusted Period of Confinement	15	11	10
Reception Date (See BPT §2289)	79	03	23
At Large Time	0	0	
PAROLE DATE	95	03	03

MISCELLANEOUS

Parole granted

PH 1/93

PENAL CODE NOTICES

SECTION 3042

☒ SENT

11-30-89

(DATE)

COMMITMENT OFFENSE

187 PC

(CODE SECTION)

MURDER 1ST

(TITLE)

A334928

(CASE NUMBER)

1

(COUNT NUMBER)

Date Received by CDC

3-23-79

Controlling MEPD

9-3-85

Type of Hearing

☐ INITIAL

☒ SUBSEQUENT

5

(HEARING NO.)

If Subsequent Hearing, Date of Last Hearing

1-25-89

Department Representative

Counsel for Prisoner

LINDA CLARK

Address

P.O. BOX 26 TEHACHAPI, CA. 93561

District Attorney Representative

County

LOS ANGELES

PAROLE HEARING CALENDAR

The following represents the findings, determination, and order of the Board of Prison Terms, State of California.

By:

Presiding (Name)

Ernest W. Golof

Date

Concurring (Name)

Date

1/23/90

Concurring (Name)

Date

Ray J. Jurekus

NAME

CDC NUMBER

INSTITUTION

CALENDAR

HEARING DATE

HERNANDEZ, PETER

C-03015

CMC-E

1-90

1-23-90

CALIFORNIA BOARD OF PRISON TERMS

In the Matter of the	Life Prisoner
Hearing of	Subsequent Parole Consideration (5)
HERNANDEZ, Peter	Granted
C-03015	
CMC-E	

This matter was heard before the Board of Prison Terms (BPT) on January 23, 1990, at the California Mens Colony-East. The hearing panel was composed of D. Brown, Commissioner; R. Jauregui, Commissioner; and E. Coldren, Deputy Commissioner.

Present at the hearing were: P. Hernandez, Prisoner; L. Clark, Counsel for Prisoner; and H. Giss, Deputy District Attorney, Los Angeles County.

Any others present are identified in the transcript.

Oral and documentary evidence was submitted and after due consideration of all the evidence, the panel makes the following findings:

Legal Status

On March 23, 1979, the prisoner was received in prison pursuant to Penal Code (PC) §1168 for a violation of PC §187 and pursuant to PC §1170 for a violation of PC §§217/12022.5, first degree murder and assault with intent to commit murder with use of a firearm, two counts (Los Angeles County Case No. A-334928, Counts 1, 2 and 3). The controlling minimum eligible parole date (MEPD) was September 3, 1985.

PC §3041(a) provides that the BPT shall meet with persons sentenced under PC §1168 and shall normally set a parole release date unless, pursuant to PC §3041(b), the Board determines that a parole date cannot be fixed at this hearing.

This hearing is conducted pursuant to Title 15, California Code of Regulations (15 CCR), Division 2, Chapter 3, Article 5, which sets forth parole consideration criteria and guidelines for life prisoners implementing PC §3041.

Statement of Facts

The prisoner was convicted of first degree murder in the shooting death of victim Tony Sanchez. The prisoner went through three trials and was committed to the California Department of Corrections (CDC) nearly two years after the murder. The prisoner was arrested as a result of an investigation into a triple shooting which occurred April 25, 1977, at about 9:10 p.m., near 1185 West 24th Street in Los Angeles. Three victims, Tony Sanchez, Eledoro Rosales and Santo Rodriguez, were accosted by the prisoner and a crime partner while standing in front of the 24th Street address. After a few words between them, the prisoner drew a handgun and began firing. Victim Sanchez was immediately mortally wounded. Victim Rodriguez was

shot in the left eye, but turned and ran. Victim Rosales was subsequently shot in the buttocks as he and Rodriguez fled on foot. Victim Rosales died shortly after the shooting, but his death was not connected to this incident or the prisoner.

Parole Suitability

15 CCR §2281(a) requires that the panel first determine whether the prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison. 15 CCR §2281(c) sets forth circumstances tending to show unsuitability and 15 CCR §2281(d) sets forth circumstances tending to show suitability. These regulations are guidelines only.

The panel relied on the following circumstances in determining whether or not the prisoner is suitable for parole:

1. The prisoner has a stable social history as exhibited by his reasonably stable relationships with others including an honorable discharge from the United States Army.
2. While imprisoned, the prisoner enhanced his ability

to function within the law upon release through participation in:

- a) Educational programs which included a high school diploma on June 12, 1987;
- b) Self-help and therapy programs, notably Alcoholics Anonymous (AA) with attendance from 1986 and continuing to the present date;
- c) Vocational programs, i.e., Vocational Television Production, Vocational Electric Maintenance, Vocational Electronics and Data Processing, all completed;
- d) Institutional job assignments including Procurement Clerk and Hospital Purchasing Clerk with exceptional work reports.

3. The motivation for crime was committed as a result of significant stress in the prisoner's life at that time.

4. The prisoner lacks a significant history of violent crime. There was an arrest for robbery on January 8, 1977, which was reduced to Vehicle Code Section 10851 with a 36 month summary probation and fine.

5. The prisoner's maturation, growth and understanding and age upon release reduces the probability of recidivism.

6. The prisoner has realistic parole plans which include family support and employment offers.

7. The prisoner has maintained close family ties while

imprisoned via letters and some visits.

8. The prisoner's positive institutional behavior indicates significant improvement in self-control. In 1988, the prisoner was granted a parole date but was not approved upon review, yet he continued to maintain positive adjustments giving a good indication of his ability to function under stress.

9. The prisoner shows signs of remorse and gives indications that he understands the nature and magnitude of the offense. He accepts responsibility for his criminal behavior, and has the desire to change toward good citizenship.

10. The representative of the District Attorney's Office of Los Angeles who was at the hearing was not opposed to parole and this was considered by the Panel. The comments of the Decision Review Unit Report dated August 26, 1988 were also considered by the panel.

11. Psychiatric Factors. The Psychiatric Evaluation dated October 25, 1989, authored by Sherman E. Butler, M.D., Staff Psychiatrist, is favorable for parole release.

The Category X Psychiatric Council Evaluation dated June 28, 1988, authored by R. A. Orling, Ph.D., Senior Psychologist, Steven C. Walker, Ph.D., Staff Psychologist, and Ron Metz, Correctional Counselor II, is favorable and indicates that the prisoner's violence potential is less

than average and he is expected to remain psychiatrically stable upon release.

Based on the information contained in the record and considered at this hearing, the panel states as required by PC §3043.5 that the prisoner would not pose a threat to public safety if released on parole.

Therefore, the prisoner is found suitable for a projected release date.

Base Term of Confinement

PC §3041(a) provides that if a prisoner is found suitable for parole, the Board shall set a parole release date in a manner "...that will provide uniform terms for offenses of a similar gravity and magnitude in respect to their threat to the public." 15 CCR §2280-2290 implement this policy. 15 CCR §2282(a) requires that a term be set for the base offense, the most serious of all life offenses for which the prisoner has been committed to prison. Suggested base terms are set forth in 15 CCR §2282(b). 15 CCR §§2283 and 2284 set forth circumstances in aggravation and mitigation respectively. All of these regulations are guidelines only.

Based upon the facts set forth above, the base offense is first degree murder, PC §187, Case No. A-334928, Count one.

16-11-30

00-06-20

16-05-10

The term is derived from the matrix at 15 CCR §2282(b), Category III-B, in that there was no prior relationship existed between the victim and the prisoner and death was immediate.

The panel assessed 204 months for the base offense and noted that this is the aggravated term due to the following reasons:

In committing the offense, the prisoner subjected two other persons to serious injury or death.

Firearm Enhancement

CAC §2285 provides for an additional term of 2 years if the prisoner personally used a firearm in the commission of any life crime unless the panel states specific reasons for not adding enhancement.

The term set forth above is increased by 2 years for the use of a firearm in the offense.

The panel is not assessing any time for the charges for assault with intent to commit murder with use of firearm violation of PC §217 and 12022.5 Case No. A-334928 Counts 2 and three.

The panel elected not to assess any time for non-life commitments because they occurred in the same transaction as the life crime and the panel further believes that the time assessed for the base offense is appropriate for the

16-05-12

+ 02-00-00

18-05-10

total incident.

Post-Conviction Behavior

15 CCR §2290 establishes procedures for the application of credit for good behavior in prison which may be used to reduce the term or advance a parole date already established.

March 1979 to March 1980:

MONTHS

The prisoner participated in Vocational Electrical Maintenance.

He went to school full time, participated in group therapy programming and remained disciplinary free -

4

March 1980 to March 1981:

The prisoner went to school full time at SQ. He was a Catholic Chapel worker and participated in group therapy programming.

He remained disciplinary free -

4

March 1981 to March 1982:

On 7/20/87, the prisoner received a California Department of Corrections (CDC) disciplinary (115) for marijuana possession. On 6/12/87, he graduated from high school. He was vice president of the Mens Advisory Council (MAN) and a janitor -

0

March 1982 to March 1983:

The prisoner was a Captains Clerk with
laudatories. He was assigned to the dental
clinic. He was the Mens Advisory Clinic
(MAC) Vice President and took college courses - 4

March 1983 to March 1984:

The prisoner received a CDC 115 for force
and violence. He was assigned to the
maintenance crew and Vocational TV Prod. - 0

March 1984 to March 1985:

The prisoner completed one year in
Vocational TV Prod. at CTF. He was involved
in the community awareness group and participated
in self-help. He remained disciplinary free - 4

March 1985 to March 1986:

The prisoner was assigned to Vocational
TV Prod. at CTF/CMC. He was a Procurement Clerk.
He remained disciplinary free - 4

March 1986 to March 1987:

The prisoner was at CMC and assigned to
Vocational Electronics and Data Processing.
He participated in AA and substance abuse
groups. He remained disciplinary free - 4

March 1987 to March 1988:

FOR
RECORDS OFFICER
USEPre-prison
Credit

The prisoner continued Vocational Electronics and Data Processing. He continued participation in AA and substance abuse groups. He remained disciplinary free -

4

March 1988 to March 1989:

The prisoner participated in the Category X Program at CMC. He continued participation in Vocational Data Processing and AA. He remained disciplinary free -

4

March 1989 to January 23, 1989:

The prisoner was a Procurement Clerk. He continued Vocational Data Processing and his participation in AA. He remained disciplinary free -

4

TOTAL

36

18-05-10
- 03-00-00
15-05-10 ✓

Statements submitted into the prisoner's record pursuant to PC §§1203.01 and 3042 have been considered by the Board panel in this hearing.

Order

PC §3041.5(b)(1) provides that within ten days following any meeting where a parole date has been set, the Board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of

failure to meet such conditions.

The total period of confinement pursuant to this decision is composed of: 228 months Base Term and enhancements; less 36 months post-conviction credits for a total of 192 months.

The prisoner shall not engage in the conduct specified in 15 CCR §2451. Such conduct may result in rescission or postponement of the parole date.

Parole Conditions

PC §3053 provides that the BPT, upon granting any parole to any prisoner, may impose on the parole such conditions as it may deem proper.

The prisoner is to be released pursuant to the notice and general conditions of parole established in 15 CCR §§2511 & 2512.

In addition, the prisoner is subject to the following special conditions of parole pursuant to 15 CCR §2513:

1. Do not use alcoholic beverages.
2. Participate in anti-narcotic testing.

The reason for the imposition of Special Conditions is that Alcohol abuse was related to the instant offense.

NOTE TO CDC STAFF:

If the prisoner is released to a county other than the county of the commitment offense, the BPT is to be

FOR

RECORDS OFFICER

USE

Pre-prison

Credit

notified.

EFFECTIVE DATE OF THIS DECISION FEB 22 1990.

HERNANDEZ, P. C-03015
km

-12-

1/23/90

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

2135

REVIEW OF PROPOSED DECISION

=====

☐ APPROVED ☒ REFER TO DECISION REVIEW COMMITTEE ☐ REFER TO RECONSIDERATION PANEL

INMATE Peter Hernandez

CDC NUMBER C 03015

TYPE OF HEARING Subsequent Parole Consideration Hearing

DATE OF HEARING 1/23/90

The Decision Review Unit (LMS) has completed a review of the above hearing and has identified the following issues which need further review.

The hearing panel in assessing the term gave the prisoner 6 months for a prior felony conviction under I5 CCR sec. 2286(c)(2). The conviction for which the time was assessed was a vehicle theft under VC sec. 10851 for which the prisoner was sentenced in 1977 to 36 months summary probation and received a fine. This offense was not a felony (see PC § 17(b)(1) and the CII rap sheet). Therefore, six months should not have been assessed for this offense.

RECOMMENDATION:

Eliminate the paragraph (on page 7 of the yellow decision) assessing time for the prior felony conviction, change the total time assessed on page II of the blue decision to 228 months (instead of the panel's assessment of 234 months), and change the total decision time after deduction of credits to 192 months (from 198 months).

DECISION REVIEW UNIT SIGNATURE

DATE

WILLIAM V. CASHDOLLAR

2-5-90

REVIEWED BY LEGAL COUNSEL

LEGAL COUNSEL INITIALS

RESULT

☐ YES ☐ NO☐ CONCUR ☐ DISSENT

LEGAL COUNSEL COMMENTS:

I have reviewed the above-referenced file and ☒ concur ☐ dissent with the Decision Review Unit.

COMMENTS:

Refer To Decision Review Committee

CHIEF DEPUTY COMMISSIONER SIGNATURE

DATE

James B. Dowling

2-7-90

BPT 1138 (4/87)

STATE OF CALIFORNIA

Page 1 of 1

BOARD

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

DECISION REVIEW COMMITTEE REVIEW OF PROPOSED DECISION

INMATE Peter Hernandez

CDC Number C 03015

TYPE OF HEARING Subsequent LIFE PAROLE CONSIDERATION

DATE OF HEARING 1/23/90

☐ Affirm original decision
 ☐ Schedule new hearing
 ☒ Modify decision

MODIFICATION ORDERED:

Eliminate the paragraph (on page 7 of the yellow decision) assessing time for the prior felony conviction, change the total time assessed on page II of the blue decision to 228 months (instead of the panel's assessment of 234 months), and change the total decision time after deduction of credits to 192 months (from 198 months).

SUPPORTIVE REASONING FOR DECISION:

This more closely carries out the intention of the hearing panel.

COMMISSIONER SIGNATURE

DATE

☒ CONCUR☐ DISSENT

COMMISSIONER/D.C. SIGNATURE

DATE

☒ CONCUR☐ DISSENT

COMMISSIONER/D.C. SIGNATURE

DATE

☒ CONCUR☐ DISSENT

I dissent from the majority for the following reasons:

SIGNATURE

DATE

BPT 1139 (4/87)

60

1
2 person's really should be taken away because of maybe's and
3 innuendos. And I agree with Mr. Giss, I think letters from
4 law enforcement agencies should be at least read between the
5 lines, because, I mean, it's kind of a "them and us"
6 attitude, you'll pardon me for saying this, Mr. Jauregui,
7 but I think you know what I'm talking about, the "them and
8 us" attitude, it seems to me, can go so far that it's
9 overboard. And I don't, in my own mind, from having worked
10 with and talked with Mr. Hernandez for several years, I
11 don't believe this incident was gang related. I think it
12 was what he says it was. He was counseled by his attorney
13 or attorneys not to say what it was, not to discuss it, to
14 the point that finally he came forward himself, after his
15 appeal process was exhausted, and I believe he came in to a
16 room like this and told the truth about it for the first
17 time. I think he's telling the truth today. That's all I
18 have to say.

19 PRESIDING DEPUTY COMMISSIONER COLDREN: Thank you,
20 Miss Clark. Mr. Hernandez?

21 INMATE HERNANDEZ: Yes, sir. I have nothing.

22 PRESIDING DEPUTY COMMISSIONER COLDREN: Okay. The
23 time is now eight minutes before 10:00 o'clock. We're going
24 to go into recess, deliberate, and we'll go off record at
25 this time.

26 RECESS

27 PRESIDING DEPUTY COMMISSIONER COLDREN: Okay. The
28

1
2 time is 10:40, and all parties previously assembled here,
3 including the prisoner, Mr. Hernandez. Mr. Hernandez has
4 found you suitable for parole and relied upon the following
5 circumstances in determining that you are suitable and would
6 not pose a threat to public safety if paroled. Number one.
7 Stable social history, as exhibited by reasonably stable
8 relationships with others, including an honorable discharge
9 from the U.S. Army. While in prison, prisoner enhances
10 ability to function within the law upon release through
11 participation in educational programs, including a high
12 school diploma, on 06/12/87. Self-help and therapy
13 programs, notably Alcoholics Anonymous, with attendance from
14 1986 continuing to the present date. Vocational programs;
15 Vocational T.V. Production, Vocational Electrical
16 Maintenance, Vocational Electronics, Data Processing, all
17 completed. Institutional job assignments, including
18 Procurement Clerk and Hospital Purchasing Clerk, all with
19 exceptional work reports. Motivation for the crime
20 committed as a result of significant stresses in the
21 prisoner's life at that time. There is a lack of
22 significant criminal history of violent crime. There was an
23 arrest for robbery on 01/08/77, but this was reduced to a
24 violation of 10851 of the Vehicle Code, with a 36 months
25 summary probation assessed, as well as a fine. Prisoner's
26 maturity, growth, understanding, and age upon release
27 reduces the probability of recidivism. Realistic parole
28

1
2 plans include family support and employment offers.
3 Prisoner has maintained close family ties while in prison
4 via letters and some visits. There is a positive
5 institutional behavior which indicates significant
6 improvement in self-control. The panel notes that in 1988,
7 the prisoner was granted a parole date, but this was not
8 approved upon review. Yet, prisoner continued to maintain
9 positive adjustments, giving a good indication of his
10 ability to function under stress. Signs of remorse. The
11 prisoner gives indications that he understands the nature
12 and magnitude of the offense, and accepts responsibility for
13 his criminal behavior. He has the desire to change toward
14 good citizenship. Other reasons or information bearing upon
15 suitability for release include the following. The District
16 Attorney's Office of Los Angeles is not opposed to parole,
17 and this was considered by the panel. The comments of the
18 Decision Review Unit Report dated 08/26/88 were also
19 considered by the panel. Under psychiatric factors. The
20 psychiatric report dated 10/25/89, authored by Dr. Butler,
21 is favorable for parole release. The Category X evaluation
22 report dated 06/28/88, authored by Dr. Orling, is favorable,
23 and indicates that prisoner's violence potential is less
24 than average, and he is expected to remain psychiatrically
25 stable upon release. Base term of confinement. Based upon
26 the facts set forth above, the base offense is murder first
27 degree, a violation of Penal Code Section 187, case number
28

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2 A-334928, count one. The term is derived from the matrix at
3 B.P.T. rules 2282-B, and 2282-C, categories 3-B, in that no
4 prior relationship existed between the victim and the
5 prisoner and death was immediate. The panel assessed 204
6 months for the base offense, and noted that this is the
7 aggravated term due to the following. In committing the
8 offense, prisoner subjected two other persons to serious
9 injury or death. Under firearm enhancement, the panel
10 assesses 24 months. Under non-life commitment, principle
11 term, and the other term, subordinate term, those were the
12 charges of assault with intent to commit murder with use of
13 firearm, a violation of Penal Code Section 217 and 12022.5
14 under case number A-334928, counts two and three, the panel
15 assessed zero time. Panel elected not to assess any term
16 for non-life commitments because they occurred in the same
17 transaction as the life crime, and panel further believes
18 that the time assessed for the base offense is appropriate
19 for the total incident. Prior felony convictions with
20 probation. On 01/08/77, for the offense of vehicle theft, a
21 violation of Penal Code Section 10851 of the Vehicle Code
22 under Los Angeles County, panel assesses a period of six
23 months for that offense. Total term, which is the base
24 offense, the fire enhancement, and other crimes, totals 238
25 months. Post-conviction credit from 03/23/79 to 01/23/90 is
26 36 months, giving a total period of confinement of 198
27 months. Special conditions of parole include the following.
28

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1
2 Do not use alcoholic beverages and participate in anti-
3 narcotic testing. The reasons for the imposition of these
4 special conditions are that alcohol abuse was related to the
5 incident offense.

6 BOARD COMMISSIONER BROWN: We should also add that
7 if the prisoner is paroled to any County other than the
8 County of commitment, that the Board of Prison Terms is to
9 be notified by the Department of Corrections.

10 PRESIDING DEPUTY COMMISSIONER COLDREN: That's
11 correct. And that concludes the reading of the decision.
12 At this time I'll ask any members if they have any comments.

13 BOARD COMMISSIONER BROWN: Just wish you luck.
14 You've got a date, now.

15 INMATE HERNANDEZ: Thank you, Mr. Brown, Mr.
16 Coldren, Mr. Jauregui, Mr. Giss, and --

17 PRESIDING DEPUTY COMMISSIONER COLDREN: You know
18 this has to be reviewed by --

19 INMATE HERNANDEZ: I understand.

20 PRESIDING DEPUTY COMMISSIONER COLDREN: -- our
21 office.

22 INMATE HERNANDEZ: I understand that. And I just,
23 you know, want to thank you again for giving me this second
24 chance. I know the seriousness of the crime. I know what I
25 did. And nothing, doing this time probably will never pay
26 for what I did. And I just want to make this the last time
27 I ever, you know, put myself in situations where I'm going
28

65

1
2 to end up in prison again.

3 PRESIDING DEPUTY COMMISSIONER COLDREN: Okay. The
4 time --

5 MR. GISS: For my record keeping, have I done this
6 right, he's got 36 months to release?

7 BOARD COMMISSIONER BROWN: No, we don't know.

8 MR. GISS: Okay.

9 BOARD COMMISSIONER BROWN: That would have to be
10 figured out by the records.

11 MR. GISS: Okay. He had 234, minus 198 for credit?

12 PRESIDING DEPUTY COMMISSIONER COLDREN: No, he had
13 234 minus 36 for credit, leaving a total period of
14 confinement of 198.

15 MR. GISS: Okay.

16 PRESIDING DEPUTY COMMISSIONER COLDREN: And from
17 that, records personnel will subtract any pre-conviction
18 credit, and then any additional progress reports that can
19 give him additional good time credits will be calculated
20 later.

21 MR. GISS: Okay. Thank you.

22 PRESIDING DEPUTY COMMISSIONER COLDREN: Okay. The
23 time is now 12 minutes before the hour of 11:00 o'clock, and
24 we're going to go off record at this time.

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**CERTIFICATION AND
DECLARATION OF TRANSCRIBER**

I, LINDA LARSON, a duly designated transcriber of PRESTON'S LEGAL SUPPORT SERVICES, do hereby declare and certify under penalty of perjury that I have transcribed Tape(s) which total two in number and cover a total of pages numbered 1 - 65, and which recording was duly recorded at San Luis Obispo, California, in the Matter of **SUBSEQUENT PAROLE CONSIDERATION HEARING OF PETER HERNANDEZ**, on the 23rd day of January, 1990, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability. I hereby certify that I am a disinterested party in the above captioned matter and have no interest in the outcome of the hearing.

Dated this 14th day of May, 1990 at Sacramento, California.



**LINDA LARSON
TRANSCRIBER**

-oOo-

EXHIBIT "B"

Patty L. Duran, Northern California Court Reporters

Yes

No
See Review of Hearing
Transcript Memorandum

CORRECTIONS TO THE DECISION HAVE BEEN MADE

PETER HERNANDEZ, Inmate
PAUL TURLEY, Deputy District Attorney
KATERA E. RUTLEDGE, Attorney for Inmate
CORRECTIONAL OFFICERS UNIDENTIFIED

OTHERS PRESENT:

JAMES DAVIS, Presiding Commissioner
DENNIS SMITH, Deputy Commissioner

PANEL PRESENT:

JULY 13, 2006

SOLEDA, CALIFORNIA

CORRECTIONAL TRAINING FACILITY

)
) PETER HERNANDEZ
)
)
) Hearing of:
) Term Parole Consideration
) In the matter of the Life

CDC Number C-03015

**INMATE
COPY**

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

SUBSEQUENT PAROLE CONSIDERATION HEARING

---000---

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DEPUTY COMMISSIONER SMITH: We're on the record.

PRESIDING COMMISSIONER DAVIS: This is a subsequent parole consideration hearing for Peter Hernandez, CDC number C-03015. Today's date is July the 13th, 2006. We're located at the Correctional Training Facility in Soledad. The inmate was received on March 23rd, 1979, from Los Angeles County and a life term began on March 23rd, 1979, with a minimum eligible parole date of September 3rd, 1985. The controlling offense was the inmate had been committed of murder first, case number A334928, count one Penal Code Section 187. The inmate received a term of seven years to life. This hearing is being tape-recorded and for the purposes of voice identification, we'll state our first and last name. When it reaches you Mr. Hernandez if you'll also give us your CDC number first.

INMATE HERNANDEZ: Yes.

PRESIDING COMMISSIONER DAVIS: So I'll start in with my left. I'm James Davis, D-A-V-I-Commissioner.

DEPUTY COMMISSIONER SMITH: My name is Dennis Smith, S-M-I-T-H. I'm Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY TURLEY: Paul
2 Turley, T-U-R-L-E-Y. DA's Office, LA County.
3 ATTORNEY RUTLEDGE: Katera E. Rutledge,
4 R-U-T-L-E-D-G-E, Attorney for Mr. Hernandez.
5 INMATE HERNANDEZ: Peter Hernandez,
6 Prisoner. Prisoner number C-03015.
7 DEPUTY COMMISSIONER SMITH: Spell Your
8 last name please, sir.
9 INMATE HERNANDEZ: H-E-R-N-A-N-D-E-Z.
10 DEPUTY COMMISSIONER SMITH: Thank you,
11 sir.
12 PRESIDING COMMISSIONER DAVIS: And let
13 the record also reflect we're joined by two
14 Correctional Officers who are here for security
15 purposes only and will not be actively
16 participating in this hearing. Before we begin,
17 Mr. Hernandez in front of you in the laminated
18 piece of paper if you would read the Americans
19 with Disabilities Act Statement please.
20 INMATE HERNANDEZ: "ADA,
21 Americans with Disabilities Act. The
22 Americans with Disability (sic) Act is
23 a law to help people with disability,
24 disability problems that make it hard
25 for some people to see, hear, to read,
26 talk, walk, learn, (inaudible), work,
27 take care of themselves and

1 (inaudible). Nobody can be kept out of
2 business or activities because of
3 disability. If you have a disability
4 you have the right to ask for help to
5 get ready for your BPT hearing.
6 (inaudible) hearing, talk, read forms
7 and papers and understand that
8 (inaudible) making sure what you ask
9 for to make sure that you have a
10 disability that is covered by the ADA
11 and that you have asked for the right
12 kind of help. If you do not get help,
13 or if you don't think you got the kind
14 of help you need, ask for the BPT 1074
15 grievance form. You can also get help
16 to fill it out."
17 PRESIDING COMMISSIONER DAVIS: That's very
18 good. Thank you.
19 INMATE HERNANDEZ: You're welcome.
20 PRESIDING COMMISSIONER DAVIS: And I
21 notice you were able to do that without glasses
22 today. Do you normally wear glasses?
23 INMATE HERNANDEZ: No, I don't.
24 PRESIDING COMMISSIONER DAVIS: Good for
25 you. And you're able to hear me all right?
26 INMATE HERNANDEZ: Yes, sir.
27 PRESIDING COMMISSIONER DAVIS: You walked

1 here today on your (inaudible)?
 2 INMATE HERNANDEZ: Yes, sir.
 3 PRESIDING COMMISSIONER DAVIS: All right.
 4 I see we're set and ready to go?
 5 INMATE HERNANDEZ: Yes, sir.
 6 PRESIDING COMMISSIONER DAVIS: Excellent.
 7 I notice that with regard to the 1073 form, BPT
 8 1073 form you reviewed together with staff of the
 9 institution and it being that you do not have any
 10 disability that would be qualified under the
 11 Americans with Disabilities Act. Is that
 12 correct?
 13 INMATE HERNANDEZ: That's correct.
 14 PRESIDING COMMISSIONER DAVIS: All right.
 15 Can you think of any reason why you would not be
 16 able to actively participate in this hearing this
 17 afternoon?
 18 INMATE HERNANDEZ: No, sir.
 19 PRESIDING COMMISSIONER DAVIS: Okay.
 20 Great. And counselor, you're also satisfied with
 21 that?
 22 ATTORNEY RUTLEDGE: Yes, sir.
 23 PRESIDING COMMISSIONER DAVIS: Very well.
 24 You, this hearing is being conducted pursuant to
 25 Penal Code Sections 3041, 3042 and the Rules and
 26 Regulations of the Board of Prison Terms covering
 27 parole consideration terms for life inmates. The

1 purpose of today's hearing is we once again
2 consider the number and nature of the crimes for
3 which you were committed, your prior criminal and
4 social history and your behavior in the
5 programming since you were committed. We've had
6 the opportunity to review your Central file and
7 your prior transcripts and you'll be given an
8 opportunity to correct or clarify the record as
9 we proceed. We will reach a decision today and
10 inform you of whether or not we find you suitable
11 for parole and the reasons for our decision. If
12 you are found suitable for parole the length of
13 your confinement will be explained to you.
14 Nothing that happens in today's hearing will
15 change the findings of the court and we're not
16 here to retry your case. The Panel is here for
17 the sole purpose of determining your suitability
18 for parole. Do you understand that sir?
19 **INMATE HERNANDEZ:** Yes, sir.
20 **PRESIDING COMMISSIONER DAVIS:** And the
21 hearing will be conducted in basically two
22 phases. First, I will discuss with you the crime
23 for which you were committed, as well as your
24 prior criminal and social history. And
25 Commissioner Smith will then discuss with you
26 your progress, your counselor's report and your
27 psychological evaluation, as well, as well as

1 Your parole plans and any letters of support or
2 opposition, if they may exist. Once that's
3 concluded the Commissioner, with District
4 Attorney and your Attorney will be given an
5 opportunity to ask you questions. Questions that
6 come from the District Attorney will be asked
7 through the chair and you will respond back to
8 the Panel with your answer. Next, the District
9 Attorney and then your Attorney and then finally
10 you will be given an opportunity to make a
11 closing statement. Those statements are --
12 should focus on why you believe that you are
13 suitable for parole. California Code of
14 Regulations states that regardless of time served
15 an inmate shall be found unsuitable for and
16 denied parole if in the judgment of the Panel the
17 inmate would pose an unreasonable risk of danger
18 to society if released from prison. You have
19 certain rights. Those rights include right to a
20 timely notice of this hearing, the right to
21 review your Central file and the right to present
22 relevant documents. Counselor, are you satisfied
23 that your client's rights have been met today?
24 **ATTORNEY RUTLEDGE:** Yes, sir.
25 **PRESIDING COMMISSIONER DAVIS:** All right.
26 Mr. Hernandez, you also have an additional right
27 and that is to be heard by an impartial Panel.

1 Now you've heard Mr. Smith and I introduce
2 ourselves today. Do you have any reason to
3 believe that we would not be impartial?
4 **INMATE HERNANDEZ:** No, sir.
5 **PRESIDING COMMISSIONER DAVIS:** Thank you.
6 And you will receive a written copy of our
7 tentative decision today. That decision becomes
8 effect within 120 days. A copy of the decision
9 and a copy of the transcript will be sent to you.
10 You are not required to admit your offense today
11 or discuss your offense, however the Panel does
12 accept the findings of the court to be true. Do
13 you understand that?
14 **INMATE HERNANDEZ:** Yes, sir.
15 **PRESIDING COMMISSIONER DAVIS:** Great.
16 The Board has (inaudible) process. If you
17 disagree with anything in today's hearing you
18 have the right to go directly to court with your
19 complaint. Mr. Smith, we going to be dealing
20 with anything from the confidential file
21 (inaudible)?
22 **DEPUTY COMMISSIONER SMITH:** No, we will
23 not.
24 **PRESIDING COMMISSIONER DAVIS:** Okay. I'm
25 going to pass the checklist of documents to both
26 counsel. If you would take a look at this and
27 make sure we're offering you all the same list of

1 documents.
2 DEPUTY DISTRICT ATTORNEY TURLEY: I have
3 those.
4 ATTORNEY RUTLEDGE: Yes, sir. Thank you.
5 We have the document.
6 PRESIDING COMMISSIONER DAVIS: All right.
7 Thank you. Those will be marked as Exhibit 1
8 then. (inaudible). Ms. Rutledge, any additional
9 documents that you'd like us to consider today?
10 ATTORNEY RUTLEDGE: No, sir.
11 PRESIDING COMMISSIONER DAVIS: Any
12 preliminary objections?
13 ATTORNEY RUTLEDGE: We would just note
14 that Mr. Hernandez's hearing should have been in
15 December of last year. Is that correct?
16 INMATE HERNANDEZ: About, yes.
17 ATTORNEY RUTLEDGE: But, so it's about
18 what, eight months behind?
19 PRESIDING COMMISSIONER DAVIS: It is.
20 ATTORNEY RUTLEDGE: Okay. We just wanted
21 to note for the record that is beings (sic)
22 approximately eight months behind.
23 PRESIDING COMMISSIONER DAVIS: We -- we
24 apologize for the delay Mr. Hernandez.
25 INMATE HERNANDEZ: Okay.
26 PRESIDING COMMISSIONER DAVIS: Will your
27 client be speaking with us today?

1 ATTORNEY RUTLEDGE: Yes.
2 DEPUTY COMMISSIONER SMITH: Actually if I
3 can correct that. His last hearing was in
4 January of '05.
5 ATTORNEY RUTLEDGE: Oh.
6 DEPUTY COMMISSIONER SMITH: So, so we're
7 roughly six months --
8 ATTORNEY RUTLEDGE: Yeah.
9 DEPUTY COMMISSIONER SMITH: -- past.
10 That was last year.
11 ATTORNEY RUTLEDGE: Okay. Thank you.
12 DEPUTY COMMISSIONER SMITH: You're
13 welcome.
14 ATTORNEY RUTLEDGE: There was another
15 question you had.
16 PRESIDING COMMISSIONER DAVIS: Will --
17 will Mr. Hernandez be speaking with us today?
18 ATTORNEY RUTLEDGE: Yes, sir. He'll be
19 speaking with you on all subjects and issues.
20 PRESIDING COMMISSIONER DAVIS: Very well.
21 Mr. Hernandez, would you raise your right hand
22 please, sir? Do you solemnly swear that the
23 testimony you will give at the hearing today will
24 be the truth and nothing but the truth?
25 INMATE HERNANDEZ: Yes, sir.
26 PRESIDING COMMISSIONER DAVIS: Okay. All
27 right. Without objection I'm going to

1 incorporate by reference the court of appeals
2 document from April 21st, 1981, pages through,
3 through 8, pages 3 through 8. And they refer to
4 the summary of the ward report of the 2004
5 calendar starting on page 1 where it states under
6 (a)1. Summary of the crime:
7 "On 4-25-77 at approximately 9:00
8 p.m. Peter Hernandez and co-
9 defendant Jose Montez approached
10 three Mexican-American males in a
11 residential area of Los Angeles.
12 Following a brief conversation
13 Hernandez pulled a gun from his
14 coat, fired a shot at victim Tony
15 Sanchez, S-A-N-C-H-E-Z, at point
16 blank range killing him with a shot
17 to the heart. Victims Rosales and
18 Rodriguez, R-O-S-A-L-E-S, and
19 Rodriguez, R-O-D-R-I-G-U-E-Z, ran
20 from the scene, but were pursued by
21 Hernandez who continued firing the
22 gun striking both men in the leg as
23 crime partner Montez, M-O-N-T-E-Z,
24 yelled, 'Get them, get them'. After
25 emptying the weapon Hernandez and
26 Montez returned to the van that
27 Hernandez had been driving and fled

1 the scene. Hernandez was later
2 identified by the wounded victims.
3 He and Montez were apprehended at
4 their residences on the following
5 morning. Subsequent investigation
6 revealed that Hernandez had
7 attempted to purchase marijuana from
8 the victims and when advised that
9 they had none opened fire. Both
10 Hernandez and Montez denied any
11 involvement in the crime maintaining
12 this denial through three trials,
13 the third of which resulted in
14 Hernandez's conviction for the
15 present case and Montez's conviction
16 for murder second degree. It was
17 noted that all three victims were
18 known gang members and that the
19 motive for the crime was believed by
20 the District Attorney's Office to
21 have been gang related. Hernandez
22 continued to maintain his innocence
23 until exhaustion of all fuels
24 processed at which time he admitted
25 his guilt and the information for
26 this came from the 61588 diagnostic
27 being the evaluation pages 2 through

1 3 and the Probation Officer's quote
2 pages 5 through 7 and a (inaudible)
3 decision made on 6-28-1 pages 8
4 through 12 and 14 through 15."
5 So, Mr. Hernandez, did you commit this
6 crime?
7 INMATE HERNANDEZ: Yes, sir.
8 PRESIDING COMMISSIONER DAVIS: Now I know
9 that you have a, a fairly comprehensive statement
10 in this 2004 report as well. Why don't you tell
11 me in your own words what happened?
12 INMATE HERNANDEZ: That afternoon I'd
13 stopped work and, well a few weeks prior my
14 sister's house was burglarized. We know what,
15 when was the --
16 DEPUTY DISTRICT ATTORNEY TURLEY: Excuse
17 me, please. Could you ask him if he could speak
18 up just a little bit? He's (inaudible).
19 PRESIDING COMMISSIONER DAVIS:
20 (inaudible).
21 INMATE HERNANDEZ: (inaudible).
22 PRESIDING COMMISSIONER DAVIS: (inaudible)
23 this.
24 ATTORNEY RUTLEDGE: You (inaudible).
25 PRESIDING COMMISSIONER DAVIS: You also --
26 INMATE HERNANDEZ: This is not
27 (inaudible).

1 PRESIDING COMMISSIONER DAVIS: (inaudible)
2 get you some water.
3 INMATE HERNANDEZ: Thank you. Two weeks
4 prior my sister's house had been burglarized and
5 we had made police reports about it, about the
6 burglary and at that time I (inaudible) I had low
7 confidence in the police being able to find out
8 who it was. I thought that how, how it would be
9 easier for me to look around and find out more or
10 less anybody was involved in the burglary. I run
11 down every idea that I -- there's a lot of gangs,
12 kids in gangs, people running around doing all
13 kinds of things like that. So that afternoon
14 that I got off, got off of work one, one of the
15 friends that I, a (inaudible) told me he say, he
16 told me that he thought that he knew the person
17 that had had the property I was looking for. Cause I
18 had, I had told most of the persons in, in the,
19 in the neighborhood, the things that were missing
20 from my sister's home and that I had to have
21 them, that I needed to get them back. When he
22 told me that he knew more or less the person
23 could have these, these belongings then I told
24 him, "Let's go over there and, and look for
25 them." And that's what we did. We went over
26 there and it must have been I think about six
27 o'clock in the afternoon, something like that.

1 And then I (inaudible) I got to the, to the
2 neighborhood and I spoke to one of the guys there
3 and asked him for, for, for a person by the name
4 of Tito that lived around there and he told me,
5 "Yes." He pointed to a green house and said, "He
6 lives over there." So I went over there to the
7 house. At that point there were three gentlemen
8 that I believe (inaudible) on the porch and one
9 of them came down to the fence as I went to the
10 fence and then he asked me, you know, what I
11 wanted. I told him that I was looking for Tito
12 and he told me that, first he said, "What for?"
13 as I recall and I told him, "Because I, I
14 understand he has some, some hot things for
15 sale." He said, "Well who told you that?" I
16 said that I just needed to talk to him. And at
17 that point one of the other, the guy at the
18 corner had told where the house was came, came on
19 to the site and he says, "This guy's looking for
20 Tito." And he goes, "Yeah, I know." So the, the
21 other person that was on the porch came down and
22 then he, and he, and he talked to -- so that guy
23 asked him what I, what I want and, and he says,
24 "He's looking for Tito for some hot stuff that he
25 says he's trying to, he's trying to get." He
26 said, "No, we don't have nothing like that." So
27 he says, "Who are you anyway?" I said well, "I

1 don't know him that much, but you know." He
 2 said, "No, you get out of here." And I said,
 3 "Wait a minute I'm not leaving till I see him."
 4 He says. "You better get out of here." And he
 5 pulled out a weapon on me and he pointed it
 6 towards me and I said. "Okay, no problem."
 7 Probably I, so I, I got in the van and left. A
 8 partner, a friend of mine was with me, he told
 9 me, "You know what, you shouldn't let him get
 10 away with that." I know where's a gun, so we'll
 11 get a gun and we'll come back. And I said, "You
 12 know what, okay, let's do it." And so we went
 13 over there and he went to go see some friends, he
 14 came back and he said, "Here, I got a gun." And,
 15 and I said. "Okay, let me have it." Then I got
 16 it and put it in my jacket pocket. At that point
 17 I drove back to that area. I passed through the
 18 house, I didn't see nobody there. As I was going
 19 by the, as I was going to the corner and I saw
 20 three individuals that were standing by, by the
 21 corner market store and when I, when I passed
 22 through slow I took a look at them then I noticed
 23 that at least two of them were the same ones that
 24 I was talking to. So then I went around, parked
 25 the van, came back and then confronted them.
 26 Crossed the street in front of them and, and the
 27 first person -- happened to be people that was

1 standing. I didn't know at that time because I
2 didn't know (inaudible). So when, when, when I
3 went, came to the, to the parked cars onto the
4 sidewalk he kind of like went back and was
5 surprised to see us. And goes, "Who are you?" I
6 said, "I'm looking for Tito." He says, "Well
7 what do you want from him?" I said, "I'm looking
8 because he has some belongings that, that belong
9 to me." He says, "No, no, no." He says, "What
10 are you talking about." I said, "You have an
11 amplifier that, that (inaudible) were," excuse
12 me, "those were the things that were, that were
13 missing after the burglary. So I'm, I'm looking
14 for an amplifier and a, and a, and a color TV and
15 a guitar." He said, "No we don't have none of
16 this. Just get out of here." At that point he
17 came toward me and he had his hand in his pocket.
18 And I had my, my weapon in my pocket also. My,
19 my hand was in there. So when he took two, I
20 recall two or three steps towards me I just
21 pulled the gun out and I fired. At that point,
22 after the, after the, the first shot I felt the
23 other guys get up and I just turned around and,
24 and, and I fired at them. And they began to run
25 and till this day I, I couldn't remember my, my,
26 my partner saying, "Get him", or anything. I
27 was, I don't know, I, I just didn't, didn't feel

1 right and I kept firing till the gun went empty
2 and then I ran to, to the van and, and you know,
3 we got, I was shaking very, very hard and I, I
4 don't remember what I told my partner or
5 anything. I just, just go, "You know, we got to
6 get out of here." And I left.
7 PRESIDING COMMISSIONER DAVIS: The, the
8 gun that you got, do you have any idea who, who
9 that came from?
10 INMATE HERNANDEZ: It was some
11 apartments, but I waited outside and my crime
12 partner only went up there and got it.
13 PRESIDING COMMISSIONER DAVIS: Had you
14 ever gotten a gun from that apartment before?
15 INMATE HERNANDEZ: No.
16 PRESIDING COMMISSIONER DAVIS: What kind
17 of gun was it?
18 INMATE HERNANDEZ: I think it was a,
19 looked like a nine millimeter.
20 PRESIDING COMMISSIONER DAVIS: Did you
21 check and make sure it was loaded?
22 INMATE HERNANDEZ: You know, no, I
23 didn't.
24 PRESIDING COMMISSIONER DAVIS: Had you
25 ever fired that kind of gun before?
26 INMATE HERNANDEZ: No. No, I hadn't.
27 PRESIDING COMMISSIONER DAVIS: So you had

1 no idea it was going to work or not?
2 INMATE HERNANDEZ: No, I didn't.
3 PRESIDING COMMISSIONER DAVIS: Did you
4 test it?
5 INMATE HERNANDEZ: No, I didn't.
6 PRESIDING COMMISSIONER DAVIS: So you went
7 back and, and confronted the, confronted the
8 person who turned out to be Tito. Was that the
9 same person that had the weapon before?
10 INMATE HERNANDEZ: No, it wasn't.
11 PRESIDING COMMISSIONER DAVIS: Did you see
12 a weapon on Tito?
13 INMATE HERNANDEZ: No, I didn't.
14 PRESIDING COMMISSIONER DAVIS: The other
15 people who were there that you fired at, did you
16 see any weapons that they might have had?
17 INMATE HERNANDEZ: No, sir.
18 PRESIDING COMMISSIONER DAVIS: Were either
19 one of them the, the person who had the weapon
20 before?
21 INMATE HERNANDEZ: Yes. One of them was.
22 PRESIDING COMMISSIONER DAVIS: One of them
23 was. But you didn't see it the second time,
24 correct?
25 INMATE HERNANDEZ: No, I didn't.
26 PRESIDING COMMISSIONER DAVIS: After all
27 of this happened, as you shot Tito, you shot the

1 other people, got back in the van and took off,
2 what did you do after that?
3 INMATE HERNANDEZ: Yeah. We ran and
4 bought some beer.
5 PRESIDING COMMISSIONER DAVIS: Okay. You
6 ran and bought some beer, then what?
7 INMATE HERNANDEZ: And then, and then I
8 went home.
9 PRESIDING COMMISSIONER DAVIS: Then what
10 did you do?
11 INMATE HERNANDEZ: I remember going to
12 the restroom.
13 PRESIDING COMMISSIONER DAVIS: What did
14 you do with the gun?
15 INMATE HERNANDEZ: Oh the gun, I gave it
16 back to my crime partner.
17 PRESIDING COMMISSIONER DAVIS: So you
18 returned it?
19 INMATE HERNANDEZ: Uh-huh. Yes, sir.
20 PRESIDING COMMISSIONER DAVIS: When did
21 the police arrive?
22 INMATE HERNANDEZ: As I recall it was
23 very early in the morning. Could have been two
24 in the morning. Something like that.
25 PRESIDING COMMISSIONER DAVIS: What
26 happened that evening? For you, what happened,
27 what did you do?

1 INMATE HERNANDEZ: Well after I went
2 back, it was about I think ten o'clock, eleven,
3 then I just, I went to bed.
4 PRESIDING COMMISSIONER DAVIS: Did you
5 ever find out if these people were in any way,
6 shape or form associated with the original
7 burglary that you were trying to recover the
8 stuff for your sister?
9 INMATE HERNANDEZ: No.
10 PRESIDING COMMISSIONER DAVIS: That never
11 came out? All right. When you didn't have
12 confidence in the police to find the, the, the
13 equipment once you had tracked down some of this
14 information did you ever think about calling them
15 and giving them that information?
16 INMATE HERNANDEZ: No, sir.
17 PRESIDING COMMISSIONER DAVIS: In terms of
18 personal factors, you were born in Las Cruces,
19 New Mexico, you're the second of two children,
20 and if I say anything in here that isn't right or
21 doesn't, isn't right on point please let me know.
22 INMATE HERNANDEZ: Yes, sir.
23 PRESIDING COMMISSIONER DAVIS: We'll
24 correct that as we go along. You were raised by
25 your mother in part and your, in part because
26 your parents divorced when you were two years
27 old, so you were raised by your mom?

27 PRESIDING COMMISSIONER DAVIS: Okay.

26 home, drink his beer --

25 INMATE HERNANDEZ: No. He'd just come

24 wasn't a mean drunk then?

23 PRESIDING COMMISSIONER DAVIS: Was a,

22 he was --

21 INMATE HERNANDEZ: No. He, he never --

20 would -- did he abuse you at all?

19 PRESIDING COMMISSIONER DAVIS: So he

18 always --

17 drink a lot. He was a hardworking man, but he'd

16 INMATE HERNANDEZ: Because he used to

15 you know that?

14 PRESIDING COMMISSIONER DAVIS: And how do

13 INMATE HERNANDEZ: Yes, sir.

12 indicates that your stepfather's an alcoholic.

11 PRESIDING COMMISSIONER DAVIS: But this

10 INMATE HERNANDEZ: No, sir.

9 that?

8 record or mental health issues, anything like

7 family members have a problem with any arrest

6 PRESIDING COMMISSIONER DAVIS: No other

5 INMATE HERNANDEZ: Yes, sir.

4 and a stepfather and two half brothers?

3 good relationship with all your family members

2 PRESIDING COMMISSIONER DAVIS: And have a

1 INMATE HERNANDEZ: Yes, sir.

1 INMATE HERNANDEZ: -- and goes out on
2 the, the couch.
3 PRESIDING COMMISSIONER DAVIS: Okay. And
4 so for all this purposes you had a -- had a
5 pretty normal childhood then?
6 INMATE HERNANDEZ: Yes. Yes.
7 PRESIDING COMMISSIONER DAVIS: You
8 attended Belmont High School?
9 INMATE HERNANDEZ: Yes, sir.
10 DEPUTY COMMISSIONER SMITH: (inaudible)
11 about that.
12 PRESIDING COMMISSIONER DAVIS: And you
13 dropped out to enlist in the United States Army?
14 INMATE HERNANDEZ: Yes, sir.
15 PRESIDING COMMISSIONER DAVIS: And you
16 served in the army from 2/73 until 2 of '76 and
17 received an honorable discharge?
18 INMATE HERNANDEZ: Yes, sir.
19 PRESIDING COMMISSIONER DAVIS: Received,
20 received the rank, or actually earned, it says
21 you earned the rank of an E4 and served seven
22 months in Germany while in the army?
23 INMATE HERNANDEZ: Yes, sir.
24 PRESIDING COMMISSIONER DAVIS: And it was
25 in Germany that you began the occasional use of
26 alcohol and marijuana?
27 INMATE HERNANDEZ: Yes, sir.

1 PRESIDING COMMISSIONER DAVIS: And you
2 said, well you began spending most of your time
3 off duty drinking. Let me tell you, your first
4 experience with alcohol was when you entered,
5 after you entered the army? Or had you drunk,
6 had you consumed alcohol before that?
7 INMATE HERNANDEZ: Yes, but not much like
8 in a way I didn't --
9 PRESIDING COMMISSIONER DAVIS: Okay.
10 INMATE HERNANDEZ: Very, very little.
11 PRESIDING COMMISSIONER DAVIS: So it was
12 in the army that you began to, well as abuse
13 alcohol?
14 INMATE HERNANDEZ: Yeah.
15 PRESIDING COMMISSIONER DAVIS: In 1975 you
16 married Ms. Garcia and while you were in the
17 army, and you had one daughter?
18 INMATE HERNANDEZ: Yes.
19 PRESIDING COMMISSIONER DAVIS: Are you
20 still married?
21 INMATE HERNANDEZ: No, sir.
22 PRESIDING COMMISSIONER DAVIS: No? When
23 did that, when did that marriage end?
24 INMATE HERNANDEZ: Approximately seven
25 years.
26 PRESIDING COMMISSIONER DAVIS: You
27 staying, you stay in touch with your daughter?

1 INMATE HERNANDEZ: Yes, sir.
2 PRESIDING COMMISSIONER DAVIS: How, how do
3 you stay in touch with her? Letters, phone
4 calls?
5 INMATE HERNANDEZ: Yes, sir.
6 PRESIDING COMMISSIONER DAVIS: Okay.
7 Where does she live?
8 INMATE HERNANDEZ: She lives right now in
9 El Paso, Texas.
10 PRESIDING COMMISSIONER DAVIS: So how
11 often --
12 INMATE HERNANDEZ: (Inaudible)
13 PRESIDING COMMISSIONER DAVIS: -- were you
14 able, are you able to talk with her?
15 INMATE HERNANDEZ: Once a month.
16 PRESIDING COMMISSIONER DAVIS: How's she
17 doing?
18 INMATE HERNANDEZ: She's doing fine.
19 PRESIDING COMMISSIONER DAVIS: What grade
20 did you drop out of high school?
21 INMATE HERNANDEZ: Ninth grade.
22 PRESIDING COMMISSIONER DAVIS: The ninth
23 grade? Why did you do that?
24 INMATE HERNANDEZ: It was during the
25 summer, I got a job during the summer and I was
26 getting a little money and I was saving up and I
27 was, I was helping my, my mom and then it, it

1 just drove me from, from school.
2 PRESIDING COMMISSIONER DAVIS: Huh.
3 INMATE HERNANDEZ: I said why should I go
4 back if I can make (inaudible). And then about a
5 year and a half later after I was working then I
6 tried to enlist in the, in the army so I can get
7 some education.
8 PRESIDING COMMISSIONER DAVIS: So that was
9 the purpose, you wanted to, you wanted to
10 complete your education?
11 INMATE HERNANDEZ: That was one of the
12 purposes.
13 PRESIDING COMMISSIONER DAVIS: Were you
14 involved in any gang activity or anything at that
15 time?
16 INMATE HERNANDEZ: No, sir.
17 PRESIDING COMMISSIONER DAVIS: No?
18 DEPUTY DISTRICT ATTORNEY TURLEY: Ever?
19 PRESIDING COMMISSIONER DAVIS: Ever?
20 INMATE HERNANDEZ: Never.
21 PRESIDING COMMISSIONER DAVIS: No never?
22 INMATE HERNANDEZ: No.
23 PRESIDING COMMISSIONER DAVIS: All right.
24 In terms of an arrest record, looks like you
25 were, no juvenile history that is known. You're
26 arrested by Los Angeles, LAPD in, on 1/8 of 1977
27 for first-degree robbery. You pled guilty to, to

1 auto theft. You were placed on 36 months summary
2 probation without supervision and ordered to pay
3 a fine. What was, what was the, what were the
4 circumstances of that?

5 **INMATE HERNANDEZ:** I -- I took a, a
6 taxicab.

7 **PRESIDING COMMISSIONER DAVIS:** Okay.
8 While the taxicab driver was in it?

9 **INMATE HERNANDEZ:** No. She just got, she
10 got off --

11 **PRESIDING COMMISSIONER DAVIS:** Okay.

12 **INMATE HERNANDEZ:** -- and that's when I
13 took the cab.

14 **PRESIDING COMMISSIONER DAVIS:** Okay. She
15 got out and you got in and took the cab?

16 **INMATE HERNANDEZ:** Yeah.

17 **PRESIDING COMMISSIONER DAVIS:** Was it a
18 (inaudible)? What'd you do that for?

19 **INMATE HERNANDEZ:** It, it was stupid now.
20 I was drinking, we had been drinking that night
21 and it was on a Saturday night I believe.

22 **PRESIDING COMMISSIONER DAVIS:** Okay. You
23 needed a ride home?

24 **INMATE HERNANDEZ:** Actually I did have, I
25 had money, I had enough money I could have paid
26 for it.

27 **PRESIDING COMMISSIONER DAVIS:** Okay. How

1 much had you had to drink before you stole the
2 cab?

3 **INMATE HERNANDEZ:** See I got to that
4 party at about seven o'clock. I had quite,
5 probably three.

6 **PRESIDING COMMISSIONER DAVIS:** So, and
7 this is during the time, you're still in the army
8 at this time?

9 **INMATE HERNANDEZ:** No. No, sir.

10 **PRESIDING COMMISSIONER DAVIS:** You were
11 out of the army at this time?

12 **INMATE HERNANDEZ:** Yes.

13 **PRESIDING COMMISSIONER DAVIS:** Okay. And
14 you're arrested in, on 4/26 of 1977 that actually
15 be for the (inaudible) offense, but now in, this
16 says in, in 1978 there was an arrest for, by the
17 LAPD for shoplifting?

18 **INMATE HERNANDEZ:** Yes.

19 **PRESIDING COMMISSIONER DAVIS:** What was
20 that about?

21 **INMATE HERNANDEZ:** I attempted to steal
22 some glasses. Well, I did steal them.

23 **PRESIDING COMMISSIONER DAVIS:** Okay. And
24 then another contact with LAPD for drinking in
25 public?

26 **INMATE HERNANDEZ:** Yes, sir.

27 **PRESIDING COMMISSIONER DAVIS:** So just

1 the, the one incident where you actually, you
2 received summary probation as well for the
3 shoplifting, so you're placed in probation?

4 **INMATE HERNANDEZ:** Yes.

5 **PRESIDING COMMISSIONER DAVIS:** Was that --
6 alcohol have anything to do with the shoplifting
7 incident also?

8 **INMATE HERNANDEZ:** Yes.

9 **PRESIDING COMMISSIONER DAVIS:** So there
10 was a thread running consistently through this?

11 **INMATE HERNANDEZ:** Yes.

12 **PRESIDING COMMISSIONER DAVIS:** What about
13 drug use?

14 **INMATE HERNANDEZ:** I stay away from
15 drugs.

16 **PRESIDING COMMISSIONER DAVIS:** So you
17 (inaudible) that you smoked marijuana
18 occasionally starting at age 19?

19 **INMATE HERNANDEZ:** Yes, sir.

20 **PRESIDING COMMISSIONER DAVIS:** But no
21 other substances?

22 **INMATE HERNANDEZ:** No.

23 **PRESIDING COMMISSIONER DAVIS:** No
24 cocaine, no methamphetamine? Nothing like that?

25 **INMATE HERNANDEZ:** Yes.

26 **PRESIDING COMMISSIONER DAVIS:** Just the
27 alcohol? The alcohol, so be fair to say that

1 alcohol was drug of choice at that time?

2 **INMATE HERNANDEZ:** Yes, sir.

3 **PRESIDING COMMISSIONER DAVIS:** Is there
4 anything that we haven't talked about, about the,
5 the offense itself, your history prior to coming
6 to the institution, your arrests, anything prior
7 to the incident offense that, or actually the
8 incident that your, actually prior to you coming
9 to the institution, that we haven't talked about
10 that you feel is important for this Panel to
11 understand?

12 **INMATE HERNANDEZ:** I was arrested twice
13 as a juvenile --

14 **PRESIDING COMMISSIONER DAVIS:** Okay.

15 **INMATE HERNANDEZ:** -- for truancy and I
16 don't think that -- that that was mentioned.

17 **PRESIDING COMMISSIONER DAVIS:** Right.
18 Right. I appreciate you bringing that up. And
19 you were a truant, why?

20 **INMATE HERNANDEZ:** I just didn't want to
21 go to school.

22 **PRESIDING COMMISSIONER DAVIS:** Just didn't
23 want to go to school?

24 **INMATE HERNANDEZ:** (inaudible).

25 **PRESIDING COMMISSIONER DAVIS:** Did you
26 get along all right in school?

27 **INMATE HERNANDEZ:** Yeah I, I did. It was

1 a (sic) inter, interracial at that time kind of a
2 thing going on in school.

3 **PRESIDING COMMISSIONER DAVIS:** With just
4 the --

5 **INMATE HERNANDEZ:** Majority blacks so
6 real, real an interracial (sic). But it, I had no
7 problems in school. As a matter of fact I kind
8 of like it, but I kind of let influences, you
9 know, of other people around.

10 **PRESIDING COMMISSIONER DAVIS:** Was it
11 just your general peer group that was doing the
12 influencing?

13 **INMATE HERNANDEZ:** Yeah. A few. But I
14 was mostly interested in sports. But, yeah.

15 **PRESIDING COMMISSIONER DAVIS:** Had you
16 been drinking prior to the incident offense?

17 **INMATE HERNANDEZ:** Yes, sir.

18 **PRESIDING COMMISSIONER DAVIS:** How much?

19 **INMATE HERNANDEZ:** Well, I got off of
20 work, cashed my check. I had about six of those
21 beers.

22 **PRESIDING COMMISSIONER DAVIS:** Okay.

23 **INMATE HERNANDEZ:** And --

24 **PRESIDING COMMISSIONER DAVIS:** Just you
25 personally or were you sharing it with your
26 friends?

27 **INMATE HERNANDEZ:** No. Just for me.

1 **PRESIDING COMMISSIONER DAVIS:** Okay.

2 **INMATE HERNANDEZ:** But the park that I
3 went to there was persons there that I'd give
4 them a beer. Yeah.

5 **PRESIDING COMMISSIONER DAVIS:** But you
6 didn't drink a whole six-pack yourself?

7 **INMATE HERNANDEZ:** No. I must have given
8 away three or four.

9 **PRESIDING COMMISSIONER DAVIS:** Okay. Was
10 that, was that the, the extent that you're, that
11 you'd been at work, you hadn't been drinking
12 during the time you're at work?

13 **INMATE HERNANDEZ:** No.

14 **PRESIDING COMMISSIONER DAVIS:** Okay. So
15 you were drinking after work (inaudible) --

16 **INMATE HERNANDEZ:** Yeah. After my
17 work --

18 **PRESIDING COMMISSIONER DAVIS:** Three or
19 four beers.

20 **INMATE HERNANDEZ:** -- usually I would
21 (inaudible) after I got off of work. First thing
22 I do is stop at a liquor store and buy, you know,
23 a six pack or, at that time they had tall boys,
24 maybe a couple of tall boys.

25 **PRESIDING COMMISSIONER DAVIS:** Okay. So
26 in addition to a six-pack you had a couple of
27 tall boys too?

1 **INMATE HERNANDEZ:** Yes.

2 **PRESIDING COMMISSIONER DAVIS:** Okay. So
3 how would you describe your ability to make good
4 judgments and so forth about the time that you
5 were, decided to go and check on this property
6 yourself?

7 **INMATE HERNANDEZ:** Very bad. I just, it
8 was a bad, real bad (inaudible).

9 **PRESIDING COMMISSIONER DAVIS:** It almost
10 seems like a pretty dangerous thing to have done
11 to go into a neighborhood that you weren't
12 familiar with and confront somebody about some
13 property.

14 **INMATE HERNANDEZ:** Some (inaudible) it
15 is, it was dangerous.

16 **PRESIDING COMMISSIONER DAVIS:**
17 (inaudible).

18 **INMATE HERNANDEZ:** But at that time my
19 reasoning was not, not of someone that's, you
20 know, capable to understand the consequences.

21 **PRESIDING COMMISSIONER DAVIS:** The person
22 that you were with that day, was he a gang
23 member?

24 **INMATE HERNANDEZ:** No, sir.

25 **PRESIDING COMMISSIONER DAVIS:** Anything
26 else that we haven't talked about that you feel
27 is, is important for us to understand today?

1 **INMATE HERNANDEZ:** I don't understand
2 that.

3 **PRESIDING COMMISSIONER DAVIS:** Is -- is
4 there anything that we haven't covered that,
5 that, anything about your, your past history,
6 your family life, any other influences on you,
7 things like that that you think would be
8 important for us to, to review and --

9 **INMATE HERNANDEZ:** Oh.

10 **PRESIDING COMMISSIONER DAVIS:** -- and
11 understand as we're going through all the
12 information?

13 **INMATE HERNANDEZ:** Just that I've always
14 tried, you know, to, to be the best I could. I
15 was always protective of my family and the area
16 that, that I live and where I come from -- one of
17 the other reasons I went into the military is
18 cause I didn't want to get involved with, you
19 know, the atmosphere at that time going around
20 the (inaudible) and I wanted to, to be the first
21 one other than my sister to be able to help our
22 family find a better place to -- to live. And I
23 let everybody down because it's hard to do
24 anything. That just became my --

25 **PRESIDING COMMISSIONER DAVIS:** How did
26 you feel when they, when you were confronted with
27 a gun the first time when he pointed the gun at

1 you and, and you had to leave?

2 **INMATE HERNANDEZ:** I felt scared
3 personally when -- when he pulled the gun out.

4 **PRESIDING COMMISSIONER DAVIS:** How about
5 after you'd already left? How'd you feel then?

6 **INMATE HERNANDEZ:** Felt anger and sort of
7 like, well nobody does this to me, you know.

8 **PRESIDING COMMISSIONER DAVIS:** Feel
9 insulted, disrespected?

10 **INMATE HERNANDEZ:** Yes, sir. Very much.
11 So when my partner came with the idea of a gun I
12 made, says let's go.

13 **PRESIDING COMMISSIONER DAVIS:** Any
14 questions, Commissioner?

15 **DEPUTY COMMISSIONER SMITH:** Just that a
16 question of -- of clarification. When
17 Commissioner Davis asked you earlier -- earlier
18 if your knew what kind of a gun it was, you --
19 you said you didn't know. You thought it might
20 have been nine millimeter?

21 **INMATE HERNANDEZ:** Yes.

22 **DEPUTY COMMISSIONER SMITH:** In, in the
23 (inaudible) report when, when you were discussing
24 the commitment offense you'd indicated that when
25 you were in the army that you were trained with a
26 .45 caliber?

27 **INMATE HERNANDEZ:** Yes, sir.

1 **DEPUTY COMMISSIONER SMITH:** And when in
2 fact you had earned an expert badge --

3 **INMATE HERNANDEZ:** Yes, sir.

4 **DEPUTY COMMISSIONER SMITH:** -- in that
5 weapon?

6 **INMATE HERNANDEZ:** Yes, sir.

7 **DEPUTY COMMISSIONER SMITH:** I'm a little
8 confused by some one that would have earned an
9 expert badge shooting a .45 caliber wouldn't know
10 the difference between a nine millimeter, nine
11 millimeter and a .45. I mean they're
12 dramatically different.

13 **INMATE HERNANDEZ:** Of course. It wasn't
14 a .45. I knew that. And the, the only reason it
15 was a nine millimeter that I became aware of just
16 through after the, you know, the arrest and all.

17 **DEPUTY COMMISSIONER SMITH:** Okay. So you
18 knew what it wasn't, you weren't sure what it
19 was?

20 **INMATE HERNANDEZ:** Yes.

21 **DEPUTY COMMISSIONER SMITH:** Okay. Great.
22 I appreciate the clarification. Thank you.

23 **PRESIDING COMMISSIONER DAVIS:** Any further
24 questions?

25 **DEPUTY COMMISSIONER SMITH:** No.

26 **PRESIDING COMMISSIONER DAVIS:** All right.
27 I'll ask you to turn your attention, please, to

1 Commissioner Smith.

2 **DEPUTY COMMISSIONER SMITH:** (inaudible)
3 to the C File you were received at the Department
4 of Corrections on, on March 23rd, 1979. Received
5 here at CTF on June 24th, 1998. You have a
6 classification score of 19, which is the lowest
7 classification score that a life inmate can
8 attain. Your last hearing was held on January 6,
9 2005. You received a one-year denial and that
10 was your twelfth subsequent hearing. Since
11 you've been incarcerated you generally had a
12 positive adjustment history. You've had seven
13 CDC 128A's, the last one being in December of
14 2000 for disobeying staff. And I would have at
15 that part frankly where although you only have
16 seven 128's (inaudible) having been incarcerated
17 for as long as you have been and you've gone
18 through the number of parole hearings that you've
19 gone, gone through that you would have, worked
20 very hard to avoid even a 128. I mean although
21 that's roughly five years ago, it's still
22 relatively current. I'm a little surprised by
23 that. You've had only four CDC 115's, and the
24 last one being December of '98 and that was from
25 mutual combat and, and three of the four 115's
26 had to do with fighting or mutual combat, which
27 was not simply you, you know, failing to report

1 for work or failing to follow instructions or, or
2 something of that, that nature. You've received
3 two certificates of completion in the Infectious
4 Disease curriculum. One in Sexually Transmitted
5 Infections and that's dated November of 2005.
6 The other Hepatitis and that's dated February of
7 2006. And you received a Certificate of
8 Completion in Entrepreneurship, that was November
9 of 2005. I haven't seen that before. What is
10 that? What is the basis of that program?

11 **INMATE HERNANDEZ:** Oh it's to start
12 getting into the, into the world of business and
13 how to, the basics of starting a business.
14 The -- the investment that you have to make.
15 The -- the difference between a franchising and a
16 sole -- sole proprietor, different aspects of --
17 of a business.

18 **DEPUTY COMMISSIONER SMITH:** Okay. Yeah.
19 As I said I hadn't seen that before. It sounds
20 like, it was a potentially very valuable program.

21 **INMATE HERNANDEZ:** Oh, it is. Yes.

22 **DEPUTY COMMISSIONER SMITH:** You received
23 ten Certificates of Achievement, Achievement for
24 completion of FEMA (inaudible) courses.

25 **INMATE HERNANDEZ:** Uh-huh.

26 **DEPUTY COMMISSIONER SMITH:** They were all
27 issued the same month.

1 **INMATE HERNANDEZ:** Yes.

2 **DEPUTY COMMISSIONER SMITH:** They were all
3 issued July of 2005. Did you take them all
4 during that month?

5 **INMATE HERNANDEZ:** No. What happened is
6 that when, when I chose a course and then I have
7 to wait for a book and then I sent them all at
8 one time.

9 **DEPUTY COMMISSIONER SMITH:** Okay.

10 **INMATE HERNANDEZ:** And that's how it came
11 in order to (inaudible) that. Because everything
12 would have to stop on each one. So I was, I was
13 keeping them all in --

14 **DEPUTY COMMISSIONER SMITH:** All at once?

15 **INMATE HERNANDEZ:** -- and then, then I
16 sent them all at once.

17 **DEPUTY COMMISSIONER SMITH:** Okay. I knew
18 there had to be a good reason. Because you got
19 ten of them in this, all issued the, the same
20 month same year. The -- the various programs
21 were entitled Decision Making, Managing
22 Volunteers, Leadership, Emergency Planning, State
23 Disaster Management, Orientation to Disaster
24 Exercises, Livestock and Disaster, Building for
25 the Earthquakes of Tomorrow, Introduction Into
26 Hazardous Materials and Functions of an Interview
27 Program Manager.

1 **INMATE HERNANDEZ:** Yes, sir.

2 **DEPUTY COMMISSIONER SMITH:** You also
3 participated in the Veterans' Self-help group
4 from August 2004 to February 2005 and your BRAG
5 Membership application was approved in April of
6 2005. BRAG stands for Balance Re-entry Activity
7 Group.

8 **INMATE HERNANDEZ:** Yes, sir.

9 **DEPUTY COMMISSIONER SMITH:** Is that an
10 ongoing group?

11 **INMATE HERNANDEZ:** Yes.

12 **DEPUTY COMMISSIONER SMITH:** Okay. So
13 you're still participating in that group?

14 **INMATE HERNANDEZ:** We have, right now
15 because of staff shortages we're having a monthly
16 meeting. If it wasn't for staff shortage, we
17 would have at least bi-weekly meetings.

18 **DEPUTY COMMISSIONER SMITH:** Describe the
19 program to us.

20 **INMATE HERNANDEZ:** The, the program is
21 to, to help inmates coming into prison to get
22 them adjusted into the different aspects of
23 parole. To prepare them in education.
24 Vocational wise through in self-study or through,
25 through correspondence. Give them peer group
26 help in the prison. Let them know that, that
27 even though you're in prison you can help

1 yourself do whatever you, whenever your release
2 comes and we have a lot of, lot of inmates that
3 parole everyday and those are the ones that we,
4 we usually get a hold of so we can be able to
5 (inaudible). If we can help with our, with our
6 own experience of being in prison and how in, in
7 my, my case when I came to prison the, there was
8 no inmate peer trying to help you to better
9 yourself to be able to get out and I felt that
10 the whole story here is of me in prison, had I
11 known about the, that there were any programs
12 like this and then they were going to help me out
13 in understanding way back when I first came to
14 prison instead of letting go two and three years
15 by without doing it.

16 **DEPUTY COMMISSIONER SMITH:** Now, you, in
17 reading a little bit about it you, you had to
18 prepare an application and submit it for approval
19 and acceptance?

20 **INMATE HERNANDEZ:** Yes, sir.

21 **DEPUTY COMMISSIONER SMITH:** Is that
22 right?

23 **INMATE HERNANDEZ:** That's true.

24 **DEPUTY COMMISSIONER SMITH:** Sounds like
25 it's --

26 **INMATE HERNANDEZ:** Only --

27 **DEPUTY COMMISSIONER SMITH:** -- it's not

1 an easy -- an easy program to become a part of;
2 is that correct?

3 **INMATE HERNANDEZ:** (inaudible). You have
4 to do it a team. You get a team to yourself and
5 that's at least two persons vouching for your,
6 you can't have no 115, no disciplinary. You have
7 to have a good work record. You have to be sort
8 of like an outstand still in prison.

9 **DEPUTY COMMISSIONER SMITH:** And you're on
10 a number of waiting lists for a period of time.
11 Are you still on waiting lists?

12 **INMATE HERNANDEZ:** Yes, sir.

13 **DEPUTY COMMISSIONER SMITH:** What -- what
14 waiting lists are you on?

15 **INMATE HERNANDEZ:** Two. I got on one of
16 the, it's a (inaudible) program that, that's
17 known nationally. It's called Alternative
18 Survivors and I'm on that waiting list and also
19 on the Alcoholics Anonymous.

20 **DEPUTY COMMISSIONER SMITH:** Okay. So
21 you're on those. Okay. Is it Narcotics
22 Anonymous or Alcoholics Anonymous?

23 **INMATE HERNANDEZ:** Alcoholic Anonymous.

24 **DEPUTY COMMISSIONER SMITH:** Okay. And
25 how long have you been on, on that waiting list?
26 I would guess probably at least a year?

27 **INMATE HERNANDEZ:** Something like that.

1 Yeah. Because I'll be continuing (inaudible) yet
2 and sometime like when we're locked down that
3 would be like (inaudible) past three weeks some
4 of the sponsors they sort of like lose interest
5 and then we have to find another sponsor to be
6 able to, to, to sponsor the (inaudible).

7 **DEPUTY COMMISSIONER SMITH:** You were
8 assigned as a culinary clerk until July 2005 and
9 then assigned to the receiving and release clerk.
10 Are you still in that assignment?

11 **INMATE HERNANDEZ:** No, sir. I'm back in
12 the culinary.

13 **DEPUTY COMMISSIONER SMITH:** When -- when
14 did you go back in culinary?

15 **INMATE HERNANDEZ:** Six months ago.

16 **DEPUTY COMMISSIONER SMITH:** About the
17 first of the year then?

18 **INMATE HERNANDEZ:** (inaudible).

19 **DEPUTY COMMISSIONER SMITH:** Okay.

20 **INMATE HERNANDEZ:** (inaudible).

21 **DEPUTY COMMISSIONER SMITH:** And doing
22 clerk functions there in the culinary?

23 **INMATE HERNANDEZ:** Yes, sir. The same,
24 the same job I did.

25 **DEPUTY COMMISSIONER SMITH:** You had a
26 psychological evaluation. It's somewhat dated,
27 it's July 23 of 2004 prepared by Dr. Hewchuk, H-

1 E-W-C-H-U-K. Before I go to that evaluation, are
2 there any other activities that you've been
3 involved in in the institution since your last
4 hearing that I haven't addressed that we should
5 be aware of?

6 **INMATE HERNANDEZ:** Yes. I'm taking now a
7 business course through the Education Department.
8 I have my, my credits. I've -- I signed up
9 (inaudible) and now I'm doing Business Principles
10 and Management. And I'm going on unit three,
11 with an overall course average of 93.

12 **DEPUTY COMMISSIONER SMITH:** Good. And
13 that's through the --

14 **INMATE HERNANDEZ:** The Educational --

15 **DEPUTY COMMISSIONER SMITH:** -- the
16 Education Department?

17 **INMATE HERNANDEZ:** Yes.

18 **DEPUTY COMMISSIONER SMITH:** Okay. And
19 when did you start that?

20 **INMATE HERNANDEZ:** In, I started that on,
21 on 11/17/2005.

22 **DEPUTY COMMISSIONER SMITH:** Okay. Thank
23 you. Anything else?

24 **INMATE HERNANDEZ:** No.

25 **DEPUTY COMMISSIONER SMITH:** Okay.

26 Because the, the psychological evaluation is
27 somewhat dated and wouldn't have been used

1 (inaudible) from an assumption that it would have
2 been used at your last hearing I'm going to
3 identify only a couple of sections in what's a
4 fairly brief evaluation to begin with. And then
5 if there are any comments or any parts of the
6 evaluation that you or Ms. Rutledge would like
7 to, to add for the record I'll certainly give you
8 that opportunity.

9 **INMATE HERNANDEZ:** Yes, sir.

10 **DEPUTY COMMISSIONER SMITH:** Running
11 through the, the first page the, the doctor
12 discusses basically your 115's. And it talks
13 about the, the issue of alcohol abuse and, and
14 that's been, I'm not going to go into detail
15 there because we, we've addressed that with you
16 being on the waiting list for Alcoholics
17 Anonymous. But the doctor does write,

18 "That during your incarceration you've
19 completed Vocational Programming and
20 Television Production, Data Processing
21 and Basic Electronics."

22 Is that --

23 **INMATE HERNANDEZ:** Yes, sir.

24 **DEPUTY COMMISSIONER SMITH:** That is
25 accurate?

26 **INMATE HERNANDEZ:** Yes, sir.

27 **DEPUTY COMMISSIONER SMITH:** Okay.

1 And that the doctor concludes that,

2 "Currently you are a suitable
3 candidate for parole with these
4 consideration with the recidivism
5 and risk factor no greater than
6 that of the average citizen in
7 community."

8 He goes on to note that,

9 "Due to your marketable skills and close
10 family support it's expected that your
11 transition to freedom and personal
12 responsibility would be relatively
13 smooth."

14 **INMATE HERNANDEZ:** Yes.

15 **DEPUTY COMMISSIONER SMITH:** Any comments
16 or any other sections of that evaluation that you
17 or Ms. Rutledge would like to address for the
18 record?

19 **ATTORNEY RUTLEDGE:** I would. Yes. On
20 page 1, third paragraph, it says his last violent
21 based 115 occurred in 1998. Although Dr. Turedey
22 (phonetic) in his previous report assessed inmate
23 Hernandez,

24 "As low risk in a community setting.
25 The Board expressed some concern
26 about a pattern of, of poor violence
27 based 115 during the 27-year period

1 of incarceration. A review of the
2 actual 115 document is in the C-File
3 and subsequent discussion with
4 inmate Hernandez confirmed that each
5 instance inmate Hernandez was the
6 victim of an assault (inaudible) by
7 another inmate reacted by defending
8 himself. The recent CC policy
9 classifying a majority of fights
10 between inmates and mutual combat
11 searched with further (inaudible).
12 Actual issues of fact -- and he
13 would -- part of it due to his
14 remarkable skills in (inaudible)
15 family support it is expected that
16 his transition and freedom and
17 personal responsibility would be
18 (inaudible) tight."

19 Thank you.

20 **DEPUTY COMMISSIONER SMITH:** Anything
21 else?

22 **ATTORNEY RUTLEDGE:** No, sir.

23 **DEPUTY COMMISSIONER SMITH:** Okay. Thank
24 you. We're going to refer back again to the, the
25 04 Board Report. Since the current Board Reports
26 I believe referred this all back to that one.
27 Under parole plans it indicates that you'd, you

1 plan on residing with your brother and sister-in-
2 law who at that time lived in Pacoima.

3 **INMATE HERNANDEZ:** Yes, sir.

4 **DEPUTY COMMISSIONER SMITH:** We have a
5 letter, which I'll address from your brother and
6 sister-in-law shortly, but they now live Sylmar.

7 **INMATE HERNANDEZ:** Yes, sir.

8 **DEPUTY COMMISSIONER SMITH:** And then
9 under employment indicates that you're confident
10 that you can employ, that you can get employment
11 with a Marco Sanchez who's a cousin?

12 **INMATE HERNANDEZ:** Yes.

13 **DEPUTY COMMISSIONER SMITH:** Who owns a
14 body and fender mechanic shop in Rosemead and in
15 the San Fernando Valley. This -- he owns two
16 businesses?

17 **INMATE HERNANDEZ:** Yes. He, he owns --

18 **DEPUTY COMMISSIONER SMITH:** And that you
19 would be employed by him to -- doing clerical
20 duties.

21 **INMATE HERNANDEZ:** Yes.

22 **DEPUTY COMMISSIONER SMITH:** And the
23 letter that, that we have, as I indicated is from
24 your brother and sister-in-law. It stated that
25 December 26, 2005, indicates that writing on your
26 behalf they would welcome you into their home in
27 Sylmar. And that, you know, they're well

1 established people because they're both employed.

2 Do you know what kind of a residence they
3 have in Sylmar?

4 **INMATE HERNANDEZ:** Yeah. It's, and it's
5 not, not considered a house and it's sort of
6 like, I don't know how you would say, duplex I
7 believe or something like that.

8 **DEPUTY COMMISSIONER SMITH:** Like a duplex
9 or a townhouse?

10 **INMATE HERNANDEZ:** Something like that.

11 **DEPUTY COMMISSIONER SMITH:** Something
12 like that? Something larger than an apartment?

13 **INMATE HERNANDEZ:** Yes. Something like,
14 yes.

15 **DEPUTY COMMISSIONER SMITH:** Do you know
16 how many bedrooms it has?

17 **INMATE HERNANDEZ:** I think they have two.
18 I don't honestly --

19 **DEPUTY COMMISSIONER SMITH:** The, the
20 reason I'm asking is that in, in the letter it
21 indicates that beside your brother and his wife
22 they also have three children.

23 **INMATE HERNANDEZ:** Yeah.

24 **DEPUTY COMMISSIONER SMITH:** So if you
25 were residing there where would you, where would
26 you sleep?

27 **INMATE HERNANDEZ:** Yeah. Good question.

1 DEPUTY COMMISSIONER SMITH: It's -- you
2 know, I'm not discounting the, the value of the
3 letter in terms of --

4 INMATE HERNANDEZ: I understand.

5 DEPUTY COMMISSIONER SMITH: -- your
6 brother would like to offer you a residence.

7 INMATE HERNANDEZ: (inaudible). No. I'm
8 just (inaudible) --

9 DEPUTY COMMISSIONER SMITH: But I'm, but,
10 but I'm wondering just how --

11 INMATE HERNANDEZ: Exactly.

12 DEPUTY COMMISSIONER SMITH: -- realistic
13 there is in the fact that such a five-person
14 family already --

15 INMATE HERNANDEZ: Uh-huh.

16 DEPUTY COMMISSIONER SMITH: The other
17 question I have is that if you were going to, and
18 I'm not familiar with that, with that area
19 geographically. If you were going to be
20 residing, for the sake of conversation, in the
21 Sylmar area --

22 INMATE HERNANDEZ: Yeah.

23 DEPUTY COMMISSIONER SMITH: -- how far is
24 that from Rosemead or San Fernando Valley?

25 INMATE HERNANDEZ: To Rosemead, I'd said
26 a good drive.

27 DEPUTY COMMISSIONER SMITH: (inaudible).

1 Sometimes a good drive is on a sunny Sunday
2 afternoon and --

3 INMATE HERNANDEZ: Yeah.

4 DEPUTY COMMISSIONER SMITH: -- sometimes
5 it's in commute driving?

6 INMATE HERNANDEZ: Yeah. This, it, it is
7 a long commute. It's going to be a long commute
8 for the I believe, you know, first four weeks
9 till I get established. And then I -- I have a
10 plan also to be able to apply under the Veterans'
11 Assets, which it's going to help me under, for to
12 be able to find a larger place, you know,
13 hopefully, you know, I can use my GI Bill to be
14 able to get a down payment for a home being that
15 my brother's working, and he's also a Veteran,
16 and so these are, these are the things that I
17 have sort of looked at and be able to make it.

18 DEPUTY COMMISSIONER SMITH: And have you
19 contacted the VA regarding those benefits would
20 be available to you?

21 INMATE HERNANDEZ: I have. Yes, I have.

22 DEPUTY COMMISSIONER SMITH: Okay.

23 INMATE HERNANDEZ: I have letters from
24 them and I have all of the, they sent me a, a
25 whole packet of the (inaudible).

26 DEPUTY COMMISSIONER SMITH: So what's
27 the, what's the most recent letter? Because

1 those are letters that, that this Panel, as past
2 Panels, you know, should be aware of.

3 **INMATE HERNANDEZ:** And I, and I didn't
4 bring the copy of that letter. But I'll, I'll be
5 glad to, I, I can show you the latest one that I
6 have. I think it's, it's about a year old that,
7 that was on - I don't want to take much of your
8 time.

9 **DEPUTY COMMISSIONER SMITH:** No. We,
10 this, this is an extremely important hearing.
11 You have all the, all the time that you need.

12 **INMATE HERNANDEZ:** I don't have it, but I
13 can get in touch with them because the GI Bill I
14 think, I understand it to be, has changed since I
15 think after I think '82. And in the time that,
16 that I served was during the Viet Nam era time,
17 which means that all my benefits are different
18 than the benefits that are now given. And in,
19 and in mine a lot of them are still there. The
20 only, the only one that expired during my
21 incarceration was the education benefit that I
22 had. That only lasted ten years and, and I'm
23 assuming that expired. But that's the only
24 benefit that's, that, that has expired since I've
25 been in prison. The home loan, the 1980 I
26 believe, 1986 Veterans' Benefit Bill that passed
27 by President, I believe it was, I forget the

1 President, but I recall --

2 **DEPUTY COMMISSIONER SMITH:** (inaudible).

3 **INMATE HERNANDEZ:** -- that it was, it
4 was, this was to help the Veterans that were
5 homeless and the persons that were, that were
6 also coming out of prison or that needed help in
7 adjustment that that was also going to be
8 beneficial to us.

9 **DEPUTY COMMISSIONER SMITH:** Some --
10 something that, that I'm curious about, you know,
11 the, you know this is your 13th subsequent
12 hearing.

13 **INMATE HERNANDEZ:** Seventeen.

14 **DEPUTY COMMISSIONER SMITH:** No. We had
15 your 12th was in '05. So this, this is your 13th
16 subsequent hearing. So you had one initial,
17 which was 14 and you probably had a couple of
18 document, documentation hearings prior to that.

19 **INMATE HERNANDEZ:** Well, when I came in
20 at the time I never had a document, I had one
21 documentation in '80, in '80 --

22 **DEPUTY COMMISSIONER SMITH:** Well, my
23 point is that, that I'm sure at least, if not in
24 every one of those instances the, in the majority
25 of those instances you would have been counseled
26 on how important it is to have letters of support
27 for residence, employment, from family and

1 friends and so forth.

2 INMATE HERNANDEZ: Yes.

3 DEPUTY COMMISSIONER SMITH: And you have,
4 you know, a very positive letter from your
5 brother.

6 INMATE HERNANDEZ: Yes.

7 DEPUTY COMMISSIONER SMITH: You know,
8 certainly some, some questions with regard to the
9 viability of the residential plan that we've
10 already addressed. But there's no employment
11 letters.

12 INMATE HERNANDEZ: Yes.

13 DEPUTY COMMISSIONER SMITH: And, and I'm
14 wondering why.

15 INMATE HERNANDEZ: Prior to '88 I used to
16 always get letters, a lot of letters, a lot of
17 jobs, opportunity. I was found suitable in 1988
18 and then on review it was --

19 DEPUTY COMMISSIONER SMITH: Yeah. But,
20 but we're talking now. We're talking now 2006.

21 INMATE HERNANDEZ: Well I'm getting, I'm
22 getting there.

23 DEPUTY COMMISSIONER SMITH: Okay. Well I
24 don't want to roll the clock back for 20 years.

25 INMATE HERNANDEZ: Okay.

26 DEPUTY COMMISSIONER SMITH: But I want to
27 talk about right now, because it, because it's

1 right now that's critical to you.

2 **INMATE HERNANDEZ:** Exactly. I understand
3 that. And my reason was that every year that I
4 come to this hearing my family, the person that I
5 love, used to get their hopes up high, real high.
6 And being that in 1990 I received a, I was
7 (inaudible) received a, a release date and I held
8 that for two years. They had me coming home
9 already and then, you know, the extension period
10 and it was taken away and ever since then I kind
11 of like that, that I wasn't going to put them
12 through this again. My grandmother died during
13 (inaudible) time and, you know, I, I (inaudible),
14 you know why should I be bothering them people
15 out there if I'm not never going to get out.

16 **DEPUTY COMMISSIONER SMITH:** Well, I -- I
17 understand your, your point of courtesy and
18 certainly we're a long way from making a decision
19 about whether or not we're going to find you
20 eligible today.

21 **INMATE HERNANDEZ:** Right.

22 **DEPUTY COMMISSIONER SMITH:** But you need
23 to understand that if, if you don't have all the
24 I's dotted and all the, the T's crossed that to
25 an extent you may be handcuffing the Board. And
26 again, you know, because of, of the number of
27 hearings you've had and, you know, other past

1 letters, you know, we'll certainly discuss those
2 at the recess, so I'm not suggesting that, you
3 know, we're not, not going to grant at this
4 point, because again I, I have no idea. But you
5 need to understand at the very least that by not
6 establishing parole plans, your residence and
7 employment and getting the kinds of letters that
8 may get other people's hopes up that you tend to
9 handcuff the Panels. And you're not doing
10 yourself the service; you're doing yourself a
11 disfavor. You need to understand that. I'm sure
12 you've heard that before.

13 **INMATE HERNANDEZ:** Yes, I have.

14 **DEPUTY COMMISSIONER SMITH:** But some,
15 some things bear repeating.

16 **INMATE HERNANDEZ:** Yes, sir. I, I
17 appreciate it.

18 **PRESIDING COMMISSIONER DAVIS:** We'll take
19 a short recess.

20 **DEPUTY COMMISSIONER SMITH:** Yes.

21 **R E C E S S**

22 **DEPUTY COMMISSIONER SMITH:** And the
23 previously identified is back in the hearing
24 room.

25 **PRESIDING COMMISSIONER DAVIS:** All right.
26 I appreciate everyone's indulgence. It was
27 getting a little stuffy in here for me. So I've

56.

1 also given everyone permission to shed their
2 coats if that's all right with you Mr. Hernandez.

3 **INMATE HERNANDEZ:** Oh, yes.

4 **PRESIDING COMMISSIONER DAVIS:** We don't
5 want to seem to informal to you, but --

6 **INMATE HERNANDEZ:** Sure.

7 **PRESIDING COMMISSIONER DAVIS:** -- it, it
8 sure does get very stuff very quickly, so -- All
9 right. With that we'll resume where we left off.

10 **DEPUTY COMMISSIONER SMITH:** So we also,
11 also sent out what are known as 3042 notices.
12 Those are letters that go out to the various
13 Criminal Justice Agencies that were involved in
14 your commitment offense. We didn't receive any
15 responses back to those notices, although you do
16 have Mr. Turley here representing the Los Angeles
17 County District Attorney's Office and he'll be
18 participating in the hearing in just a few
19 moments. Before I return to Commissioner Davis
20 is there any, any comments that you'd like to
21 make with regard to your parole plans that I
22 haven't addressed?

23 **INMATE HERNANDEZ:** No.

24 **DEPUTY COMMISSIONER SMITH:** Okay. Thank
25 you.

26 **INMATE HERNANDEZ:** (inaudible).

27 **DEPUTY COMMISSIONER SMITH:** Commissioner.

1 **PRESIDING COMMISSIONER DAVIS:** Tell me
2 about your participation in AA. How, what, what
3 kinds of things have you found (inaudible) in
4 there?

5 **INMATE HERNANDEZ:** AA means, it's a grave
6 tool for a person that's in need of, of help
7 dealing with alcoholism. It made me realize that
8 I can enjoy some activities without, without
9 drinking alcohol. It made me realize that I
10 missed a lot of special events by drinking
11 alcohol. I can remember in one day that my
12 sister brought pictures of the wedding. I could
13 never, I couldn't remember the wedding. I
14 couldn't remember the members that participated
15 in the wedding. And because I was always
16 drinking. And it made me realize that it's also
17 detrimental to your health. Especially as you
18 get older. It does a lot of damage to your
19 liver.

20 **PRESIDING COMMISSIONER DAVIS:** You
21 consider yourself to be an alcoholic?

22 **INMATE HERNANDEZ:** Yes, sir.

23 **PRESIDING COMMISSIONER DAVIS:** Is that a
24 life-long issue for you?

25 **INMATE HERNANDEZ:** Yes, it is going to be
26 a life long issue.

27 **PRESIDING COMMISSIONER DAVIS:** What

1 things have you had to plan for your ultimate
2 release in terms of identifying AA programs on
3 the outside?

4 **INMATE HERNANDEZ:** I know that in
5 anywhere, in any city, I can dial 1-800-AA and
6 I'll get a, a sponsor on the line that's going to
7 help me. There are thousands and thousands of
8 organizations dealing with Alcohol Anonymous.
9 Not only for the alcoholic, but also for the
10 family members, because they too I believe suffer
11 and --

12 **PRESIDING COMMISSIONER DAVIS:** All right.
13 Commissioner, any questions that you might have?

14 **DEPUTY COMMISSIONER SMITH:** No.

15 **PRESIDING COMMISSIONER DAVIS:** Mr.
16 Turley, questions?

17 **DEPUTY DISTRICT ATTORNEY TURLEY:** Just a
18 couple. I kind of missed something. What
19 periods was, was the inmate actively
20 participating in AA?

21 **PRESIDING COMMISSIONER DAVIS:** Do you know
22 when you were participating in AA what years?

23 **INMATE HERNANDEZ:** I believe it's going
24 on two years right now on, on the waiting list.

25 **PRESIDING COMMISSIONER DAVIS:** Well two
26 years on the waiting list, but prior to that what
27 was your, were you actively participating in AA

1 prior to that?

2 **INMATE HERNANDEZ:** Not AA, but there was
3 a, a span of time that I had stopped
4 participating for what, (inaudible) AA. That
5 being the last, the last chrono that I have there
6 is from, should be on, on my, on my file. Right
7 before, before I got here in '89. No. '98. You
8 have on your list '98?

9 **PRESIDING COMMISSIONER DAVIS:** You got
10 here in '98.

11 **INMATE HERNANDEZ:** When I got here.
12 Thank you.

13 **DEPUTY DISTRICT ATTORNEY TURLEY:** And how
14 long have you participated in AA?

15 **PRESIDING COMMISSIONER DAVIS:** In total
16 how long have you participated in AA?

17 **INMATE HERNANDEZ:** Oh. Since '79.

18 **PRESIDING COMMISSIONER DAVIS:** Okay.

19 **DEPUTY DISTRICT ATTORNEY TURLEY:** When
20 was it that the inmate first admitted to his
21 guilt in this offense to the authorities?

22 **PRESIDING COMMISSIONER DAVIS:** Do you
23 understand the question?

24 **INMATE HERNANDEZ:** Yes.

25 **PRESIDING COMMISSIONER DAVIS:** Okay.

26 **INMATE HERNANDEZ:** I admitted to this
27 crime during a session that my (inaudible) that

1 that I mastered the therapy that they had me do.
2 During that group, so possibly five or six
3 persons that have to talk about the crime and
4 have to admit that you commit the crime. And
5 that was, I was, I was believe number four or
6 five and as I heard each person I felt a lot of
7 guilt and that was the first time that I, that I
8 voiced (inaudible) as it happened and, and
9 admitted to, admitted to, to committing this,
10 this offense.

11 **PRESIDING COMMISSIONER DAVIS:** And what
12 year was that?

13 **INMATE HERNANDEZ:** I think it was '88.
14 Or '87.

15 **DEPUTY DISTRICT ATTORNEY TURLEY:** No
16 further questions.

17 **PRESIDING COMMISSIONER DAVIS:** All right.
18 Ms. Rutledge?

19 **ATTORNEY RUTLEDGE:** Just a question too.
20 I wanted to just review some of the skills that
21 you've learned since you've been in prison. You
22 worked as a clerk?

23 **INMATE HERNANDEZ:** Yes.

24 **ATTORNEY RUTLEDGE:** How many years did
25 you put in as a clerk all together, do you think,
26 in prison?

27 **INMATE HERNANDEZ:** This time (inaudible)

1 say roughly '79 and I've done nothing but
2 clerical except for some time that I spent doing
3 vocational courses. I've always -- I always have
4 classes.

5 **ATTORNEY RUTLEDGE:** Did you complete
6 (inaudible)?

7 **INMATE HERNANDEZ:** Yeah. Data
8 Processing.

9 **ATTORNEY RUTLEDGE:** Did that help your
10 typing or what did you learn in the Data
11 Processing?

12 **INMATE HERNANDEZ:** It showed me to
13 manipulate difference softwares. It showed me a
14 different aspect of computer hardware and how to
15 maintain records, things that are needed in the
16 clerical environment.

17 **ATTORNEY RUTLEDGE:** All right. And you,
18 what other jobs have you held at the prison that
19 taught you skills that would, you could use to be
20 employed on the outside?

21 **INMATE HERNANDEZ:** Oh I think I've been
22 a -- I've been a -- I'm trying to remember the --
23 the title.

24 **ATTORNEY RUTLEDGE:** Okay. (inaudible).

25 **INMATE HERNANDEZ:** I did all the, I typed
26 all of the, the, the invoices for purchasing. I
27 was a purchasing clerk at the hospital, T and C.

1 I dealt with the purchasing orders and then
2 receiving and then we used clerical dealing with
3 different aspects of, of maintaining the, the
4 supplies. (inaudible) the culinary, on the
5 culinary (inaudible). And I, I maintained a
6 database on all the culinary workers. I did the
7 payroll. I, I prepared the lists for the
8 (inaudible) so they can come to work. It's been,
9 then I worked as at different job positions.

10 **ATTORNEY RUTLEDGE:** All right. Any other
11 skill? You were loading docks before you
12 (inaudible) at that?

13 **INMATE HERNANDEZ:** Yes.

14 **ATTORNEY RUTLEDGE:** And you got your --
15 your speech thing for an auto accident?

16 **INMATE HERNANDEZ:** Yes, ma'am.

17 **ATTORNEY RUTLEDGE:** All right. No
18 further questions.

19 **PRESIDING COMMISSIONER DAVIS:** All right.
20 Thank you. Mr. Turley, (inaudible).

21 **DEPUTY DISTRICT ATTORNEY TURLEY:** Thank
22 you. The, very long-standing conventional list
23 in, you know, things you just said. Perhaps the
24 very best school to teach maturity and
25 responsibility is military service. And this
26 inmate had the benefit of that school for about
27 three and a half years. And apparently he was a

1 poor student. Almost immediately after getting
2 out of the army rather than having learned
3 responsibility, rather than learn the, the
4 lessons of growing up, take control of himself,
5 keeping his nose clean and holding a good job he
6 seemed to learn irresponsibility and the only
7 meaningful experience that based on what we've
8 heard today evolved from the army was that he
9 came out of the army with a substantial amount of
10 experience in how to handle a handgun. The
11 particular, the underlying offense here was
12 again, part of, of a pattern of, of the events
13 that were criminal tied to alcohol. He was out
14 of the army a very short time, stole a taxicab
15 and then in less than a year after he got out of
16 the army he committed this offense. By his own
17 admission fails to discuss what he believes was a
18 burglary with the police and decides to take
19 things into his own hand. He was confronted by a
20 person, makes him angry, he's got a few beers
21 under his belt, he goes off, gets a gun, comes
22 back and without seeing (inaudible) over anything
23 else shoots another person right through the
24 heart. Killed him dead. Chases two others and
25 shoots at them. Then for an additional period,
26 approximately eleven years of so by this
27 statement, eleven or twelve years, he still

1 refuses even to admit to the authorities his own
2 guilt in the matter. And that's, it's
3 commendable that he finally got around to that,
4 but this is a very serious crime, took a person's
5 life, didn't seem to give it any, any thought at
6 all. Walked up to a person virtually at point
7 blank range and shoots him through the heart and
8 (inaudible) to that offense alone is the
9 appropriate for denial of parole. At the time
10 that he committed this offense, again he was 23
11 years old. He'd had substantial experience with
12 law enforcement agencies due to his own
13 activities. Highly improbable that he didn't
14 recognize that it was unlawful for him to even be
15 in possession of the firearm. And he -- he made
16 a concerted effort went, went right to the heart
17 of the matter indications criminal behavior. I
18 think that for all these reasons, but primarily
19 focusing on the, on his failure to, to learn the
20 lessons of life at an age when he should have
21 been completely mature he engaged in this, this
22 offense for a very trivial reason showing no
23 regard to human life and killed another person
24 in, (inaudible) a sheer act of callous disregard
25 for human life. And the people would recommend
26 that parole be denied at this time. Thank you
27 very much.

1 **PRESIDING COMMISSIONER DAVIS:** Thank you.
2 Thank you. Ms. Rutledge?

3 **ATTORNEY RUTLEDGE:** Thank you. Mr.
4 Hernandez is 52 years old; is that correct?

5 **INMATE HERNANDEZ:** Fifty-one.

6 **ATTORNEY RUTLEDGE:** Fifty-one. He's 51
7 years old. At the time this commitment offense,
8 which was 29 years ago, is that right? The
9 offense in itself --

10 **INMATE HERNANDEZ:** Yes, ma'am.
11 (inaudible).

12 **ATTORNEY RUTLEDGE:** -- was in 1977. He
13 was 23? Twenty-four, twenty-three?

14 **INMATE HERNANDEZ:** Yes.

15 **ATTORNEY RUTLEDGE:** Twenty-three years
16 old. A lot of time, I mean this is a crime
17 that's nearly 30 years old. So as far as, as,
18 him serving his time it's definitely met. He, in
19 those 30 years he had four 115's? Yeah. I think
20 it's four. I'm just going to look refer to that.
21 And --

22 **DEPUTY COMMISSIONER SMITH:** That's
23 correct, Counselor. It's four.

24 **ATTORNEY RUTLEDGE:** It's four. And they
25 were all; they all had big spans I want to note.
26 There were seven years from '83 to '90. Four
27 years. Got another one in '94. Four more years.

1 So it, it wasn't like he was, you know, racking
2 them up one a year or one every other year.
3 There was just a significant amount of time that
4 transpired between each one. And the last one
5 being more than eight years ago. And I think
6 that, and prior to him coming here he didn't
7 really have a consistent record of any kind of
8 violence. It sounds to me like when he went to
9 the military he learned how to shoot guns. He
10 probably wouldn't have felt this confident that
11 day with a gun. I mean I -- I was amazed to take
12 a gun that you, and never tried to shoot it
13 first, you know, unless you've got some kind of
14 skill in, in that regard. This was a situational
15 circumstance where he just applied poor judgment
16 for whatever reason. But that again was almost
17 30 years ago. Today he's -- he's complied with
18 everything in the system that he's been asked to
19 do. In fact, there's an, there's an old Board
20 Report I'll pull up where it was dated 1987, his
21 counselor at that time said that he'd been
22 complying with the Board of Prison, at that time
23 the Board of Prison Terms and Recommendations, he
24 remained disciplinary free, he upgraded
25 vocationally, participated in self-help, there's
26 lots of Board Reports that indicated a
27 participation and there was, he did another AB

1 Substance Abuse, and another course. He'd done
2 countless self-help groups. More recently some
3 prison fellowship work in fact a few years ago.
4 He has college courses. He completed his
5 (inaudible). Lots of (inaudible) chronos for his
6 different jobs he's had throughout the years and
7 I want to, I think the, the two main things
8 about, about him today are one, he meets the
9 suitability factors completely. He's got
10 marketable skills, he has a place to live with
11 family members who know him in LA County upon his
12 release. Second, he's been found suitable twice.
13 Two different Boards, two years apart, found Mr.
14 Hernandez suitable and other Boards too have
15 referred him to, you know, I guess to (inaudible)
16 commitment offense to, sent him back for psyches
17 and he did fine. He did fine in the Cat X
18 program. Going back to '87 he got a great psych
19 report.

20 "The probability of him committing a
21 violent act is considerably reduced
22 from what it was at the time of his
23 arrest and there was a high
24 probability that he could complete a
25 course of parole without incident.
26 He has the capacity to make a good
27 occupational and social adjustment

1 on release."

2 That's '87. And then moving up to '99
3 he, he, on, on the diagnostic impressions he had
4 no personality disorder. He had a gap of '90.
5 His prognosis is very positive for being able to
6 maintain his current mental (inaudible) in the
7 community upon parole. And then review of the
8 life crime is that he understood several of the
9 key factors, which favorable of the crime. He
10 acknowledged that he deserves whatever punishment
11 will come to him for his actions. He stated it
12 was never his intention to kill anyone. I
13 believe this inmate showed above average
14 understanding that why this crime occurred and
15 the appropriate and genuine amount of remorse.
16 And then, then up to a recent psyche report,
17 which you reviewed. So over decades he'd gotten
18 good psyche reports. Again he's been found
19 suitable twice and he's complied with everything,
20 as far as suitability factors goes. He meets all
21 of them. And he has, again, nearly 29 years in.
22 So all of those things considered, I would ask
23 the Board to give him a parole date today. And,
24 and I would note too that because he's been found
25 suitable twice I would also ask the Board to set
26 a term. Because I believe that the, the, under
27 the law that he was sentenced under when he's

1 found suitable a term is supposed to be set.

2 **PRESIDING COMMISSIONER DAVIS:** Okay.

3 Thank you. Mr. Hernandez, now it's your
4 opportunity to address the Panel directly and
5 tell us why you believe that you are suitable for
6 parole.

7 **INMATE HERNANDEZ:** Yes' sir. My thoughts
8 right now are running past me right now, but I
9 have to say that I don't blame nobody for
10 committing this crime, because I, I'm very sorry
11 for it. And I was (inaudible) it's been this
12 long. I feel, and I beg for, another chance just
13 to, to live this remaining years that I probably
14 have with my family. And I wish then that, that
15 I probably have no right to, to ask for this.
16 And, and I know that this time that I've done
17 here is not going to be compared to, to finally
18 when I reach the judgment when I (inaudible). So
19 that's --

20 **PRESIDING COMMISSIONER DAVIS:** All right.

21 Thank you very much, sir.

22 **DEPUTY COMMISSIONER SMITH:** Thank you.

23 **PRESIDING COMMISSIONER DAVIS:** We'll now
24 recess for deliberation.

25 **R E C E S S**

26 **--oOo--**

27

CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER SMITH: For the record, everyone previously identified is back in the hearing room.

PRESIDING COMMISSIONER DAVIS: This is the matter of Peter Hernandez, CDC number C-03015.

In a review of all information received from the public and relied on the following circumstances in concluding the prisoner is not suitable for parole, he would pose a reasonable risk of danger to society or a threat (inaudible) he was in prison we come to this conclusion by the commitment offense that was committed in a special callous manner. There were multiple victims attacked (inaudible) one was killed in the same incident. The motive for the crime was very (inaudible) in relation to the offense.

These conclusions were drawn from the Statement of Fact wherein the prisoner as to what he describes as an attempt to recover stolen property where he was threatened by what he describes as an armed person. He sought out a weapon, put himself back into a dangerous situation, confronted the person who may or may not have been involved in the theft of his

1 sister's property and without seeing a weapon or
2 any (inaudible) and threat he used this, he used
3 his own weapon to shoot and kill the victim then
4 turned the weapon on to the victims' two
5 companions shooting at them, striking them in the
6 leg. We find there is basically a pattern of
7 criminal conduct and a failure to prophet from
8 the society previous attempt to correct
9 criminality specifically adult probation. In
10 regard to institutional behavior we find that
11 there are seven 128A counseling chronos, the last
12 of which was in December of 2000, and four
13 serious 115 disciplinary (inaudible), the last of
14 which was in February of 1998. The Psychological
15 Report of July of 2004 by Dr. (inaudible) is
16 supportive and the, with regard to parole plans,
17 we find that the parole plans are not realistic.
18 There is, there, there is virtually no employment
19 plan, there's no support of even employment
20 information by statements that there are some
21 distance, there's no real plan though. And your
22 residential plans of sharing a two-bedroom
23 residence with two adults and three the children
24 seems suspect. Now I say that understanding that
25 if that's the option then what you need to do is
26 come back in here with an

1 explanation that, yes, we understand it's going
2 to be tight, we thought about this. We'll put a
3 cot up in the living, we're going to partition
4 off, what, whatever it is. If that's the case
5 then, then let us know that. And that's where
6 you need to, that's where you need to focus your
7 work. I understand and appreciate that at some
8 point in time you became embarrassed or, or you
9 didn't want to burden your family more with, with
10 denial after denial. I understand. But the
11 thing of it is this is a critical part of this
12 and there's -- you could earn a date, but this
13 has to be part of your earning that date. So you
14 need to spend this, this time now in figuring out
15 your parole plan. Get a job offer. You have
16 skills, there's no reason why you can't get a job
17 offer out there, or at least something lined up.
18 Do some research to determine where you can find
19 a job given the skills that you have. And let
20 your family help you.

21 **INMATE HERNANDEZ:** Okay, sir.

22 **PRESIDING COMMISSIONER DAVIS:** It's not
23 that difficult for them to do that. The, with
24 regard to the 3032 notices. The District
25 Attorney from Los Angeles County is here in
26 person by representative because (inaudible)

27 **P. HERNANDEZ C-03015 DECISION PAGE 3 7/13/06**

1 parole. Nonetheless we want to commend you for
2 several things. Your 2005 Certificate for your
3 Entrepreneur of the workshop, your ten FEMA
4 Certificates including lessons in Leadership and
5 Planning, your Veterans Support Group of eight,
6 from eight of 2004 and two of 2005, your two
7 Health Certificates, Certificates of Achievement,
8 your work as a culinary clerk and as a receiving
9 clerk and then back again as a culinary clerk,
10 your work in the BRAG Group helping the new
11 inmates requiring an application process and
12 recommendation. You should be very proud of
13 that.

14 **INMATE HERNANDEZ:** Thank you.

15 **PRESIDING COMMISSIONER DAVIS:** That's a
16 significant achievement to have to apply for
17 something, to have to work on, you had to work to
18 get that, that wasn't just something you could
19 say yeah, I'll do that. You had to (inaudible)
20 on a record. Put that same effort into your
21 parole plans. And we appreciate the fact that
22 you're on the AA waiting list and that you're on
23 the waiting list for Alternatives to Violence, as
24 well as starting a new business course as of
25 November of '05.

26 **INMATE HERNANDEZ:** Yes, sir

27 **P. HERNANDEZ C-03015 DECISION PAGE 4 7/13/06**

1 **PRESIDING COMMISSIONER DAVIS:** That's
2 excellent. This is a one-year denial and the
3 Panel recommends that you, that you remain
4 disciplinary free, that as available that you
5 participate in self-help. You're obviously an
6 intelligent man, so if you're on a waiting list
7 for any (inaudible) don't wait forever, get some
8 books on self-help, read them, keep track of what
9 you've read, writing a book a report or be
10 prepared next time you come in to discuss with
11 the Panel what you've read and how (inaudible)
12 some insight and how you took the initiative to,
13 to do that instead of just waiting for the list
14 to (inaudible). And, and get your parole plans
15 squared away. And we are going to also request a
16 new Psychological Evaluation be done.
17 Commissioner, do you have any other thoughts on
18 this?

19 **DEPUTY COMMISSIONER SMITH:** Mr.
20 Hernandez, we're, you know, not, not to, to beat
21 you up, because we're not trying to do that.

22 **INMATE HERNANDEZ:** Yes, sir.

23 **DEPUTY COMMISSIONER SMITH:** You program
24 in, in a very, very positive manner. You
25 certainly have been incarcerated for an extended
26 period of time. You present yourself very well,
27 **P. HERNANDEZ C-03015 DECISION PAGE 5 7/13/06**

1 you're clearly an intelligent man. You developed
2 a lot of skills that can be applied in a
3 community. And yet for some reason you simply
4 opted not to take that, that next necessary step
5 to establish your parole plans. You know, this,
6 this (inaudible) denial is as much your decision
7 as it was ours. You've got to have those parole
8 plans. You -- you've got to know where you're
9 going to be living, and it's got to be realistic.

10 **INMATE HERNANDEZ:** Yes, sir.

11 **DEPUTY COMMISSIONER SMITH:** You've got to
12 know where you're going to be working. You know,
13 if, if you got a job offer and it's specific,
14 what are you going to be doing, you know, how
15 much are you going to get paid. If it's some
16 distance away from where you're going to be
17 living, how are you going to get to point A to
18 point to point B and back again. There are a
19 number of reasons why those are very important.
20 And one of the reasons is that if, if we were to
21 grant you a date, or the next Panel grants you a
22 date, that decision goes in front of the whole
23 Board --

24 **INMATE HERNANDEZ:** Yes.

25 **DEPUTY COMMISSIONER SMITH:** -- and they
26 vote to either support the granting of the date
27 **P. HERNANDEZ C-03015 DECISION PAGE 6 7/13/06**

1 or to send it back. If they vote to grant it
2 then it goes to the Governor. Okay? So it isn't
3 just our decision. Well, even if we believe you
4 can be successful in spite of not having parole
5 plans, you're coming back because nobody else is
6 going to believe that. Nobody else has the
7 opportunity to be able to sit here and talk to
8 you one-on-one face to face.

9 **INMATE HERNANDEZ:** Yes, sir.

10 **DEPUTY COMMISSIONER SMITH:** So, again,
11 I'm not trying, neither one of us is trying to,
12 you know, beat you up by telling you the same
13 thing over and over and over and over again.

14 **INMATE HERNANDEZ:** Yeah.

15 **DEPUTY COMMISSIONER SMITH:** But we want
16 you to hear us.

17 **INMATE HERNANDEZ:** Okay.

18 **DEPUTY COMMISSIONER SMITH:** And we want
19 you to hear us in a positive way. Okay? You got
20 to deal with the program.

21 **INMATE HERNANDEZ:** It's a whole lot of
22 difference, the parole plans. I'll -- I'll make
23 sure I do very extensive work on that.

24 **DEPUTY COMMISSIONER SMITH:** Good.

25 **INMATE HERNANDEZ:** And also I have a, you
26 know, a quarter report, quarterly report on how

27 **P. HERNANDEZ C-03015 DECISION PAGE 7 7/13/06**

1 I'm going to live out there (inaudible).

2 **DEPUTY COMMISSIONER SMITH:** You, you have
3 about a year to, to do that.

4 **INMATE HERNANDEZ:** Yes, sir.

5 **DEPUTY COMMISSIONER SMITH:** You know,
6 bring in the, the VA --

7 **INMATE HERNANDEZ:** Yes, sir.

8 **DEPUTY COMMISSIONER SMITH:** -- letters,
9 that information so we can present that and have
10 those documents. You can't bring in too much
11 documentation. You can only bring in too little.
12 Okay?

13 **PRESIDING COMMISSIONER DAVIS:** Take a
14 lesson from your Entrepreneurial class thinking
15 you're developing a business plan.

16 **INMATE HERNANDEZ:** Yes, sir. That's what
17 I'll (inaudible).

18 **PRESIDING COMMISSIONER DAVIS:** There you
19 go.

20 **INMATE HERNANDEZ:** Thank you very much
21 for --

22 **DEPUTY COMMISSIONER SMITH:** We wish you,
23 we wish you good luck sir.

24 **PRESIDING COMMISSIONER DAVIS:** All right.
25 (inaudible). Ms. Rutledge, thank you.

26 **ATTORNEY RUTLEDGE:** (inaudible)

27 **P. HERNANDEZ C-03015 DECISION PAGE 8 7/13/06**

1 **PRESIDING COMMISSIONER DAVIS:** Mr.

2 Turley, thank you.

3 **ATTORNEY RUTLEDGE:** Oh, it's my pleasure.

4 **ADJOURNMENT**

5 **--oOo--**

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23 **PAROLE DENIED ONE YEAR**

NOV 10 2006

24 **THIS DECISION WILL BE FINAL ON: _____**

25 **YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT**

26 **DATE, THE DECISION IS MODIFIED**


27 **P. HERNANDEZ C-03015 DECISION PAGE 9 7/13/06**

**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, PATTY L. DURAN, a duly designated transcriber, NORTHERN CALIFORNIA COURT REPORTS, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 through 78, and which recording was duly recorded at the CORRECTIONAL TRAINING FACILITY, in SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of PETER HERNANDEZ, CDC No. C-03015, on JULY 13, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated OCTOBER 2, 2006 at Sacramento
County, California.



Patty L. Duran, Transcriber
NORTHERN CALIFORNIA COURT RPTRS

EXHIBIT "C"



**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)
PAROLE CONSIDERATION HEARING
AUGUST 2004 LIFER CALENDAR**

**CORRECTIONAL TRAINING FACILITY, SOLEDAD
JULY 23, 2004**

This is a psychological evaluation update for the Board of Prison Terms on inmate Peter Hernandez, CDC# C-03015. This report is based on personal clinical interviews of the inmate on 03/24/04 and 07/23/04. Additionally, in preparation for this report, the Central file, unit health records, and previous psychological assessment prepared by Dr. Steven Terrini were examined. The clinical interviews and the review of all pertinent documents were for the express purpose of preparing this report.

Inmate Hernandez has served 27 years of a 7-year-to-life sentence on a conviction of first degree murder.

His last violence-based 115 occurred in 1998. Although Dr. Terrini, in his previous report, assessed inmate Hernandez as low-risk in a community setting, the Board expressed some concern about a pattern of four violence-based 115s during the 27-year period of incarceration. A review of the actual 115s documented in the Central file, and subsequent discussion with inmate Hernandez, confirm that in each instance, inmate Hernandez was the victim of an assault perpetrated by another inmate, and reacted by defending himself. The recent CDC policy of classifying a majority of fights between inmates as mutual combat serves to further cloud actual issues and facts.

During the most recent Parole Board hearing, some concern was also expressed about a history of alcohol abuse as a probable contributing factor to the instant offense. In fairness, inmate Hernandez has now been incarcerated for 27 years, and has remained dry for this entire time.

Further, with respect to the Parole Board's concern about self-help issues, inmate Hernandez has successfully completed Impact, and has several documented certificates in religious spiritual growth. Currently, he is wait-listed for Alcoholics Anonymous and We Care. However, due to the popularity of these programs and staff shortage at CTF, inmates have limited access.

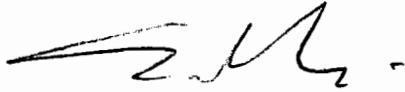
During incarceration, inmate Hernandez has completed vocational programming in television production, data processing, and basic electronics.

If released, inmate Hernandez plans to reside with his brother and sister-in-law in Pacoima, California. His cousin in nearby Rosemead has extended a job offer in an auto repair facility, which will utilize this inmate's skill in computer software.

Currently, inmate Hernandez is a suitable candidate for parole release consideration, with a recidivism and risk factor no greater than the average citizen in the community. Due to

HERNANDEZ, PETER
CDC NUMBER: C-03015
BPT PSYCHOLOGICAL EVALUATION
PAGE TWO

his marketable skills and close family support, it is expected that his transition to freedom and personal responsibility will be relatively smooth.



E. W. Hewchuk, Ph.D.
Staff Psychologist
Correctional Training Facility, Soledad



B. Zika, Ph.D.
Senior Supervising Psychologist
Correctional Training Facility, Soledad

EWH/gmj

D: 07/23/04
T: 07/27/04

D:\Word Files\BPT - 2004\HERNANDEZ, PETER C-03015 08-04 HEWCHUK.doc

**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)
PAROLE CONSIDERATION HEARING
NOVEMBER 2002 LIFER CALENDAR**

**CORRECTIONAL TRAINING FACILITY, SOLEDAD
JUNE 14, 2002**

Inmate Peter Hernandez, CDC# C-03015, was seen for a psychological evaluation for the Board of Prison Terms by Steven J. Terrini, Ph.D., Staff Psychologist at the Correctional Training Facility (CTF), on 09/21/99 for the December 1999 Lifer Calendar.

According to the instructions given to Wardens and Health Care Managers by Steven Cambra, Jr. (CDC), and G. Lewis Chartrand, Jr. (BPT) in September 1998, once a mental health evaluation is completed in the new format, revised in August 1998, a new evaluation is not necessary when an inmate appears before the Board of Prison Terms unless the BPT has filed a BPT 1000A request for a new report.

Since there is no BPT 1000A request on file, a mental health evaluation was not conducted at this time.

Bill Zika, Ph.D.

**BILL ZIKA, Ph.D.
Senior Supervising Staff Psychologist
CORRECTIONAL TRAINING FACILITY, SOLEDAD**

BZ/gmj

D: 06/14/02

T: 06/14/02

MENTAL HEALTH EVALUATION FOR THE BOARD OF PRISON TERMS
PAROLE CONSIDERATION HEARING
(REVISED AUGUST 1998)
JUNE 2001 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD
MARCH 9, 2001

Inmate Peter Hernandez, CDC# C-03015, was seen for a mental health evaluation for the Board of Prison Terms by Steven Terrini, Ph.D., Clinical Psychologist at CTF, on 09/21/99 for the December 1999 Lifer Calendar.

According to the agreement that CDC psychologists and psychiatrists made with the Board of Prison Terms, once a mental health evaluation is completed in the new format created in 1998, a new evaluation is not necessary each time the inmate appears before the Board of Prison Terms.

Therefore, a mental health evaluation was not conducted at this time.



R. S. COATE, Psy.D.
Senior Supervising Clinical Psychologist
Correctional Training Facility, Soledad

RSC/gmj

D: 03/09/01
T: 03/09/01

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
PAROLE CONSIDERATION HEARING
DECEMBER 1999 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD
SEPTEMBER 21, 1999

This is either the ninth or the tenth psychological evaluation for the Board of Prison Terms on inmate Peter Hernandez. This report is the product of a personal interview, conducted on 09/21/99, as well as a review of his Central file and unit health record. I have known this inmate previously from a past BPT psychological evaluation.

I. IDENTIFYING INFORMATION:

Inmate Hernandez is a 45-year-old, divorced, Hispanic male. His date of birth is 08/17/54. He stated his religion is Catholic. There were no unusual physical characteristics noted and he denied any history of nicknames or aliases.

II. DEVELOPMENTAL HISTORY:

Inmate Hernandez denied any history of birth defects, abnormalities of developmental milestones, a history of cruelty to animals, a history of arson, any significant childhood medical history, or a history of physical or sexual abuse as either a perpetrator or a victim.

III. EDUCATIONAL HISTORY:

Educationally, inmate Hernandez has a high school degree and has taken some college courses. Vocationally, he has participated in data processing, TV production and electrical maintenance.

IV. FAMILY HISTORY:

Inmate Hernandez's parents are still alive, although he has not had contact with his biological father for several years. His stepfather, who raised him, died a few years ago. His mother is in her 70s. He stays in contact with her through letters and telephone calls. He has two remaining siblings and has limited contact with them through his mother. None of his family

HERNANDEZ, PETER
CDC NUMBER: C-03015
BPT PSYCHOLOGICAL EVALUATION
PAGE TWO

members have ever had any significant criminal or psychiatric problems, although he felt his stepfather was an alcoholic.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Inmate Hernandez is a heterosexual male. He denied any history of sexual aggression.

VI. MARITAL HISTORY:

Inmate Hernandez was married on one occasion and later divorced. He has one child from that marriage and stays in contact with that child.

VII. MILITARY HISTORY:

Inmate Hernandez was in the Army for three years. He did not engage in any combat and received an honorable discharge.

VIII. EMPLOYMENT AND INCOME HISTORY:

In the past, inmate Hernandez has been employed in construction, working in a delivery service, working as a security officer, and doing dock work. When he paroled, he hopes to find employment in office work.

IX. SUBSTANCE ABUSE HISTORY:

Inmate Hernandez was recently on the waiting list for Alcoholics Anonymous and stated that he had a ducat to start participating in that program this evening (09/21/99). He acknowledged having an alcohol problem in the past. He also used marijuana occasionally in the past. He denied ever participating in any treatment programs or placements in the community.

X. PSYCHIATRIC AND MEDICAL HISTORY:

Inmate Hernandez's most significant medical problem involved an automobile accident. He still has throat problems, he feels, as a result of that accident. He denied a history of other head injuries, suicidal behavior, hospitalizations, or a history of seizures or other neurological conditions.

HERNANDEZ, PETER
CDC NUMBER: C-03015
BPT PSYCHOLOGICAL EVALUATION
PAGE THREE

XI. PLANS IF GRANTED RELEASE:

When he paroles, he hopes to live with his brother and his brother's family. Given the information he provided to me, it would appear his parole plans are quite viable, as he has several skills that he can be employed in and has a supportive family, and his prognosis for community living is quite positive.

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

Inmate Hernandez appeared his stated age. He was appropriately dressed and groomed. He was pleasant, coherent, cooperative, calm and alert. His speech, flow of thought and affect were all within the normal range. His intellectual functioning was estimated to be above average. There was no evidence of a mood or thought disorder. His judgment appeared to be sound. He showed good insight into his commitment offense.

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: Alcohol Abuse, in institutional remission.
AXIS II: No Contributory Personality Disorder.
AXIS V: GAF = 90.

His prognosis is very positive for being able to maintain his current mental state in the community upon parole.

XIII. REVIEW OF LIFE CRIME:

Inmate Hernandez described the circumstances surrounding his commitment offense. He understood several of the key factors which played a role in this crime, including his drinking that day, as well as "acting like an egotistical tough guy." He acknowledged that he deserves whatever punishment will come to him for his actions. He stated it was never his intention to kill anyone, but simply to recover the objects that had been burglarized from his sister's home. I believe this inmate showed an above average understanding of why this crime occurred and an appropriate and genuine amount of remorse.

HERNANDEZ, PETER
CDC NUMBER: C-03015
BPT PSYCHOLOGICAL EVALUATION
PAGE FOUR

XIV. ASSESSMENT OF DANGEROUSNESS:

- A. In consideration of several factors, including his relative lack of CDC-115 violations, as well as his lack of a violent criminal history, and his prosocial attitude, his violence potential within a controlled setting is estimated to be significantly below average relative to this Level II inmate population.
- B. If released to the community, his violence potential is estimated to be no more than the average citizen in the community.
- C. The most significant risk factor which could be a precursor to violence for this inmate would be continued abuse of alcohol. I strongly believe this man understands how alcohol affected him during this crime and he seems to have a strong intention to not drink again.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

- 1) This inmate is competent and responsible for his behavior. He has the capacity to abide by institutional standards and has generally done so during his incarceration period.
- 2) This inmate does not have a mental health disorder which would necessitate treatment either during his incarceration period or following parole.
- 3) As this man has acknowledged a problem with alcohol, I would recommend, upon parole:
 - A. Abstinence from all alcohol and illegal drugs.
 - B. Monitoring.
 - C. Mandatory attendance at self-help groups such as Alcoholics Anonymous.
- 4) Inmate Hernandez has received several, very positive, past evaluations. The Category X report of 1995 stated, "We were most favorably impressed with his achievements during his incarceration and

HERNANDEZ, PETER
CDC NUMBER: C-03015
BPT PSYCHOLOGICAL EVALUATION
PAGE FIVE

his current motivation and sincerity." The 1997 BPT psychological evaluation, done by Dr. Galbo, stated that he has "grown significantly in his years of incarceration," and he is "psychologically suited and stable enough to be paroled." I am in agreement with these past evaluations and believe that this man is an excellent candidate for parole consideration.



STEVEN J. TERRINI, Ph.D.
Senior Supervising Psychologist (A)
Correctional Training Facility, Soledad

SJT/gmj

d: 09/21/99
t: 09/27/99

**CALIFORNIA STATE PRISON - SOLANO
Vacaville, California**

**PSYCHOLOGICAL EVALUATION
FOR THE BOARD OF PRISON TERMS**

NAME: HERNANDEZ, Peter
CDC#: C-03015
HSG: 21-W1L

The following is a psychological report to the Board of Prison Terms on this 43 year old Hispanic male who is serving 7 years to life for first degree murder and two counts of assault with intent of murder. This examiner interviewed Inmate Hernandez on 8-20-97 for approximately 1 hour. His central and medical files were reviewed in conjunction with this interview to ensure accuracy and completeness in this report. This exam was for the preparation of this board report only.

BACKGROUND AND HISTORY: Mr. Hernandez was born in Las Cruces but moved to Los Angeles with his family when he was 5. His parents were divorced when he was 6. They are both still living and his mother is in Fresno and is 65 years old. His father is in Texas but he has not communicated with his him since the divorce. The instant offense took place on April 25, 1977 when the inmate confronted three people whom he knew had burglarized his brother-in-law's home. When the victim came at him, he shot his gun killing him instantly. He shot at the other two also but they fled.

Mr. Hernandez says that his health is excellent and has had no health problems for the past 20 years. He admits he was an alcoholic and is actively involved in AA. At the time of the crime he was intoxicated and he feels that alcohol was a major cause of his problems when he was younger. He started drinking at age 14 and did not get involved with illicit drugs except marijuana occasionally.

Mr. Hernandez has had few disciplinary problems and says his last CDC-115 was in 1991 which was for fighting. He has had vocational training in data processing, electrical maintenance and TV productions. He feels that he could be actively and gainfully employed if he were to be paroled.

MENTAL STATUS EXAMINATION: Mr. Hernandez' intelligence is above average. He uses good judgment now and can make good decisions as well as plans for his life when he paroles. He is oriented in all spheres and has good sensitivity to other people's needs. Several projective personality tests were administered and there is no indication that he is a violent person and would pose no danger to the free community.

Several times during the interview, Mr. Hernandez was tearful and indicated he has experienced a sense of loneliness over the years. He states on the sentence completion test "Sometimes I long to have emotional ties," and "What pains me is I can't." He says he has been married for 22 years but his wife is in New Mexico and he has not been with her during the entire time of his incarceration. However, he does have one daughter with her who is 20 years old and lives in Lake Havasu, Arizona. He feels he will probably get divorced from his wife when paroled and go live with his brother in Los

NAME: HERNANDEZ, Peter
CDC#: C-03015

MENTAL STATUS EXAMINATION, continued: Angeles. All things considered, Mr. Hernandez is free from mental illness or other emotional disturbance. He is a thinking, feeling person who is trying to put the pieces of his life together again. This can be seen in the statement he makes that "My greatest fear is failing and not trying again." He adds that he feels the need to live his life over and do things much differently. At the present time he has a well developed conscience and is highly unlikely to commit a similar offense. What is most important is that he continue his AA affiliation and seek personal counseling from the Parole Outpatient Clinic in Los Angeles if he is paroled.

PSYCHIATRIC DIAGNOSIS:

Axis I: No diagnosis.
Axis II: No diagnosis.
Axis III: None.
Axis IV: Moderate stress due to life in prison.
Axis V: GAF = 85.

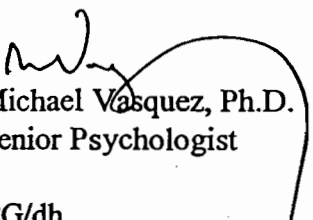
PSYCHOLOGICAL CONCLUSIONS: Mr. Hernandez is seen as a man who has grown significantly in his 20 years of incarceration and has developed numerous ego and intellectual resources to call upon when needed. He has learned to adapt to stressful situations when necessary and is not seen as a violent person or a parole risk when he is considered for it.

RECOMMENDATION FOR CLASSIFICATION COMMITTEE: Inmate Hernandez is psychologically suited and stable enough to be paroled.



Charles J. Galbo, Ph.D.
Clinical Psychologist

NOTED AND APPROVED:



Michael Vasquez, Ph.D.
Senior Psychologist

CG/dh

D: 8-20-97
T: 9-02-97

COPY SENT TO
INMATE: _____

EXHIBIT "D"

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
JANUARY 2006 CALENDAR**

HERNANDEZ, PETER

C03015

I. COMMITMENT FACTORS:

A. **Life Crime:** Remain the same as stated in previous hearings.

1. **Summary of Crime:** All relevant documents have been considered and that information remains the same.

2. **Prisoner's Version:** All relevant documents have been considered and that information remains the same.

3. **Aggravating/Mitigating Circumstances:**

a. **Aggravating Factors:** All relevant documents have been considered and that information remains the same.

b. **Mitigating Factors:** All relevant documents have been considered and that information remains the same.

B. **Multiple Crime(s):** N/A.

1. **Summary of Crime:** N/A.

2. **Prisoner's Version:** N/A.

II. PRECONVICTION FACTORS:

A. **Juvenile Record:** All relevant documents have been considered and that information remains the same.

B. **Adult Convictions and Arrests:** All relevant documents have been considered and that information remains the same.

C. **Personal Factors:** All relevant documents have been considered and that information remains the same.

HERNANDEZ, PETER

C03015

CTF-SOLEDAD

JAN/2006

Inmate Copy

III. POSTCONVICTION FACTORS:

- A. **Special Programming/Accommodations:** N/A.
- B. **Custody History:** All relevant documents have been considered and that information remains the same. Since his last board appearance Hernandez has been assigned as a Clerk in the Culinary. On 7/2/05, Hernandez was reassigned as the Receiving and Release Clerk where he currently remains assigned. He has remained at CTF in the general population with Medium A custody. (See Post Conviction Progress Report).
- C. **Therapy and Self-Help Activities:** Documents from previous hearings remain valid. Hernandez has participated in Impact, FEMA Certificates, and the Veteran's Self Help Group. (See Post Conviction Progress Reports).
- D. **Disciplinary History:** Documents from previous hearings remain valid. Hernandez continues to remain disciplinary free.
- E. **Other:** Hernandez attended his Subsequent #12 Parole Consideration Hearing on 1/6/05. Parole was denied for 1 year. The Board recommended that Hernandez remains disciplinary free; participate in self help programs; and earn positive chronos.

IV. FUTURE PLANS:

- A. **Residence:** All relevant documents have been considered and all information remains the same.
- B. **Employment:** All relevant documents have been considered and all information remains the same.
- C. **Assessment:** In review of Hernandez' parole plans, this counselor does not foresee any problems, however, it is recommended that Hernandez updates his support letters prior to his hearing.

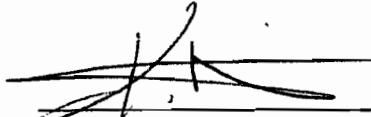
V. USINS STATUS: N/A.

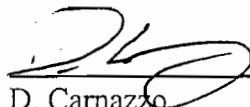
VI. SUMMARY:

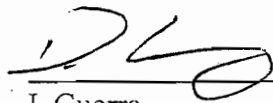
- A. Prior to release the prisoner could benefit from:
 - 1. Continuing to be disciplinary free.

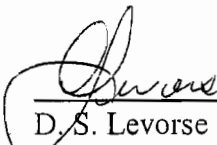
2. Participation in self-help and earn positive chronos.

- B. This report is based upon a thorough review of Hernandez' Central File and a one hour interview with Hernandez.
- C. Per the Olson Decision, Hernandez was afforded an opportunity to review his Central File. Hernandez did examine his Central File. (Refer to CDC 128-B dated 11/4/05 in the General Chrono Section of the Central File.)
- D. No accommodation was required per the Armstrong vs. Davis BPH Parole Proceedings Remedial Plan (ARP) for effective communication.


K. Heinly
Correctional Counselor I
11-17-05
Date

 CCTI 11-17-05
D. Carnazzo
Correctional Counselor II
Date

 FC (A) 11-17-05
I. Guerra
Facility Captain
Date

 C & PR 11-18-05
D.S. Levorse
Classification and Parole Representative
Date

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
9/1/04 to 10/31/05			<p>PLACEMENT: Remained at CTF in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted this period.</p> <p>ACADEMICS: None noted this period.</p> <p>WORK RECORD: Hernandez was assigned as a Clerk in the Culinary until 7/2/05. He received satisfactory to above average ratings verified by CDC 101's dated 10/1/04 and 6/1/05. On 7/2/05, Hernandez was reassigned as a Receiving and Release Clerk (non-adverse). He has no CDC 101's for this period.</p> <p>GROUP ACTIVITIES: Hernandez participated in the Veteran's self help group as verified by CDC 128B dated 3/12/05.</p> <p>PSYCH. TREATMENT: None noted during this period.</p> <p>PRISON BEHAVIOR: Hernandez remained disciplinary free during this period.</p> <p>OTHER: Hernandez successfully completed an Impact workshop verified by CDC 128B dated 9/21/04.</p> <p>Hernandez has numerous FEMA certificates dated 7/14/05 located in the miscellaneous section of his Central File.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
HERNANDEZ	C03015	CTF-SOLEDAD	11-18-05 JAN/2006

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

1. LAST NAME - FIRST NAME - MIDDLE NAME HERNANDEZ, PETER JR		2. SEX M	3. SOCIAL SECURITY NUMBER 573 88 5259		4. DATE OF BIRTH YEAR 54 MONTH 08 DAY 17
5. DEPARTMENT, COMPONENT AND BRANCH OR CLASS ARMY RA		6. GRADE RATE OR RANK SP4		7. DATE OF RANK YEAR 74 MONTH 04 DAY 30	
8a. SELECTIVE SERVICE NUMBER Not available		8b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, STATE AND ZIP CODE		9. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, State and ZIP Code) 242 1/2 E. 27th Street Los Angeles, CA 90011	
9a. TYPE OF SEPARATION Relief from active duty		9b. STATION OR INSTALLATION AT WHICH EFFECTED Fort Hood, Texas			
10. AUTHORITY AND REASON Chap 2 AR 635-200 SPD Lbk				d. EFFECTIVE DATE YEAR 76 MONTH 02 DAY 11	
11. CHARACTER OF SERVICE HONORABLE		12. TYPE OF CERTIFICATE ISSUED None		13. REENLISTMENT CODE RE-1B	
14. LAST DUTY ASSIGNMENT AND MAJOR COMMAND Co A 2d Bn 66th Armor 2d Armd Div FORSCOM		15. COMMAND TO WHICH TRANSFERRED USAR Control Gp(Rainf) RCPAC 9700 Page Blvd., St. Louis, MO 63132			
16. TERMINAL DATE OF RESERVE/MSR OBLIGATION YEAR 79 MONTH 02 DAY 11		17. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code) Los Angeles, CA 90000		18. DATE ENTERED ACTIVE DUTY THIS PERIOD YEAR 73 MONTH 02 DAY 12	
19a. PRIMARY SPECIALTY NUMBER AND TITLE 11E20 Armor Crewman 73/06/15		19b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER None		20. RECORD OF SERVICE	
21. SECONDARY SPECIALTY NUMBER AND TITLE None		21b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER None		22. RECORD OF SERVICE	
				(a) NET ACTIVE SERVICE THIS PERIOD 3 0 0	
				(b) PRIOR ACTIVE SERVICE 0 0 0	
				(c) TOTAL ACTIVE SERVICE (a + b) 3 0 0	
				(d) PRIOR INACTIVE SERVICE 0 0 0	
				(e) TOTAL SERVICE FOR PAY (c + d) 3 0 0	
				(f) FOREIGN AND/OR SEA SERVICE THIS PERIOD 0 5 15	
23. INDOCHINA OR KOREA SERVICE SINCE AUGUST 5, 1964 <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		24. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED (In Years) SECONDARY/HIGH SCHOOL 10 YRS (1-12 grades) COLLEGE 0 YRS			
25. TIME LOST (Preceding Two Yrs) None	26. DAYS ACCRUED LEAVE PAID 35 1/2 days	27. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input type="checkbox"/> \$15,000 <input type="checkbox"/> \$5,000 \$20,000 <input type="checkbox"/> \$10,000 <input type="checkbox"/> NONE		28. DISABILITY SEVERANCE PAY <input type="checkbox"/> NO <input type="checkbox"/> YES NA AMOUNT	
29. PERSONNEL SECURITY INVESTIGATION a. TYPE ENTNAC		b. DATE COMPLETED Unk			
30. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED National Defense Service Medal; Driver Mechanic Badge w/Dvr Bar(W); Marksman (Rifle); Sharpshooter (SMG); Sharpshooter (Pistol)					
31. REMARKS Individual requests a copy of DD Form 214. Last overseas service: Germany USAARMC - Leadership Crs					
32. MAILING ADDRESS AFTER SEPARATION (Street, RFD, City, County, State and ZIP Code) 242 E. 27th Street Los Angeles, CA 90011			33. SIGNATURE OF PERSON BEING SEPARATED 		
34. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER SHIRLEY E. KLEIN, CW4, USA, Asst AG			35. SIGNATURE OF OFFICER AUTHORIZED TO SIGN 		

EXHIBIT "E"

BOARD OF PRISON TERMS
LIFE PRISONER HEARING DECISION FACE SHEET

STATE OF CALIFORNIA

Records Use Only

☐ PAROLE GRANTED - (YES)

CDC: Do not release prisoner before
Governor's review

Parole Release Date

YR MO DAY

☒ PAROLE DENIED - (NO)

Attach Prison Calculation Sheet

One Year. 2006 calendar.

☐ AGREED UNSUITABLE (Attach 1001A Form) FOR: _____ YEAR(S)

☐ HEARING POSTPONED/REASON: _____

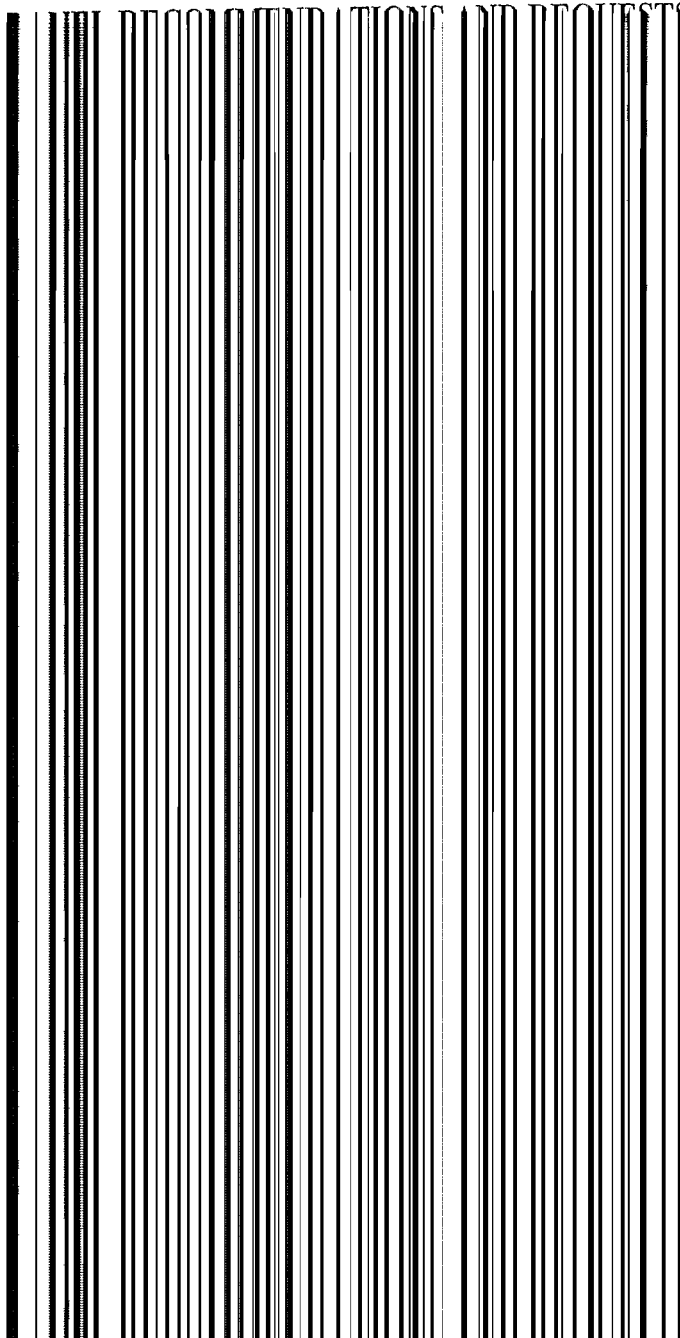


EXHIBIT "G"

The Judge Division
①

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVYN COLEMAN,

Petitioner,

No. CIV S-96-0783 LKK PAN P

vs.

BOARD OF PRISON TERMS, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 22, 2004, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Respondent has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

the case

1 category of prisoners is illegal); In re Morrall, 102 Cal. App.
2 4th 280 (2003) (same). The guarantee of neutral parole officials
3 in a suitability hearing is just as fundamental as the right to a
4 neutral judge in a court proceeding. Compare Sellars v.
5 Procunier, 641 F.2d 1295 (9th Cir. 1981) (holding that California
6 parole officials, analogous to judges, are entitled to absolute
7 immunity).

8 The Ninth Circuit previously has acknowledged California
9 inmates' due process right to parole consideration by neutral
10 decision-makers. See O'Brenski v. Maas, 915 F.2d 418, 422 (9th
11 Cir. 1990). In that case the appellate court found that a
12 neutral parole panel at a new hearing would reach the same
13 outcome and so denied relief. The record in this case simply
14 will not permit the same conclusion. The requirement of an
15 impartial decision-maker transcends concern for diminishing the
16 likelihood of error. As the Supreme Court clearly held in
17 Balisok a decision made by a fact-finder who has predetermined
18 the outcome is per se invalid -- even where there is ample
19 evidence to support it. 520 U.S. at 648.

20 Petitioner presents a convincing case that a blanket policy
21 against parole for murderers prevented him from obtaining a
22 parole suitability determination made after a fair hearing.
23 Respondent offers nothing to counter petitioner's showing.

24 Accordingly, the court hereby recommends that the petition
25 for habeas corpus be granted unless, within 60 days of the
26 district court's adoption of these recommendations, respondent

BOARD OF PRISON TERMS
LIFE PRISONER HEARING DECISION FACE SHEET

STATE OF CALIFORNIA

☐ PAROLE GRANTED - (YES)

 CDC: Do not release prisoner before
 Governor's review
Records Use Only

Parole Release Date

YR MO DAY

Attach Prison Calculation Sheet

☒ PAROLE DENIED - (NO)

One Year. 2006 calendar.
☐ AGREED UNSUITABLE (Attach 1001A Form) FOR: _____ YEAR(S)

☐ HEARING POSTPONED/REASON: _____
PANEL RECOMMENDATIONS AND REQUESTS**The Board Recommends:**
☐ No more 115's or 128A's ☒ Stay discipline free

☐ Work to reduce custody level ☐ Learn a trade*

☒ Get self-help* ☐ Get therapy*

☒ Earn positive chronos

☐ Get a GED*

☐ Recommend transfer to _____

☐ Other _____

*These programs are recommended if they are offered at your prison and you are eligible/able to participate.

Penal Code 3042 Notices ☒ Sent Date: 11-09-2004

Commitment Offense(s)

P187MURDER 1ST

Code(s)

Crime(s)

A5267641

Case #(s)

Count #(s)

 Date Inmate Came to CDC
 3/23/79

 Date Life Term Began
 3/23/79

 Minimum Eligible Parole Date
 9/3/85

☐ Initial Hearing

☒ Subsequent (Hearing No.) #12

Date of Last Hearing _____

CDC Representative D.S. LEVORSE, C&PR

Attorney for Prisoner M. TARDIFF

Address

D.A. Representative A. SOUSA

County LA

 This form and the Board's decision at the end of the hearing is only proposed and NOT FINAL. It will not become final until it is reviewed.

 Chair *Sharon Lawin*

 Date *01/06/05*

 Panel Member *Robert Briggs*

 Date *01/06/05*
~~Panel Member~~~~Date~~

NAME	CDC #	INSTITUTION	CALENDAR	DATE
HERNANDEZ, PETER	C-03015	CTF-SOLEDAD	JAN. 2005	1/6/05

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1 CALIFORNIA BOARD OF PRISON TERMS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We're back on
4 record for our decision, Mr. Hernandez

5 PRESIDING COMMISSIONER LAWIN: Thank you.

6 All parties have returned to the room. The Panel
7 has reviewed all information received from the
8 public and relied on the following circumstances
9 in concluding that you, Mr. Hernandez, are not yet
10 suitable for parole and would pose an unreasonable
11 risk of danger to society or a threat to public
12 safety if released from prison. This is a one
13 year denial. The denial is based certainly in
14 part by or on rather the commitment offense which
15 was the shooting death of Tony Sanchez. He was
16 shot one time by the inmate. According to the
17 inmate's version there had been a confrontation
18 when the inmate was trying to retrieve property
19 that had been stolen from his sister and he had
20 been informed that Mr. Sanchez had the property
21 and was trying to sell it. As I said, there was
22 one earlier confrontation. The inmate left, went
23 and got a gun and went back to the location, shot
24 Mr. Sanchez to death, wounding the other occupants
25 or his friends that were there at the time. The
26 inmate paints this to be a -- essentially that he

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1 was -- he went there to retrieve this property and
2 that he first saw a weapon when he had the first
3 confrontation with Mr. Sanchez's companions. The
4 victims instead state that Mr. Hernandez went --
5 asked if they had any -- a lid, asked if they had
6 any marijuana. When they said, no, he left and
7 then returned and essentially began firing, that
8 there was not this -- the confrontation and the
9 way that Mr. Hernandez paints it. Regardless,
10 Mr. Sanchez lost his life for the most trivial of
11 reasons. Whether it was to retrieve property, to
12 protect his honor, his family's honor, whatever it
13 happens to have been, Mr. Sanchez should not have
14 lost his life. And the crime shows a clear
15 disregard for the life and suffering of others as
16 there were multiple victims involved in the same
17 incident. And the crime was carried out in a
18 cruel fashion on unsuspecting victims. The next
19 reason for our denial would be the inmate's parole
20 plans. He does not have reasonable parole plans.
21 He says he'll live with a brother. We have no
22 letters of support for a number of years. He says
23 that he will work for a cousin. Again, letters
24 are very old. Yes, there has been a history of
25 family support, but nothing recent. We do see
26 that he maintains contact. There's a Christmas
27 **PETER HERNANDEZ C-03015 DECISION PAGE 2 1/6/05**

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1 card with a postmark of 2003, but nothing to
2 indicate that he's welcome to live with his
3 brother nor any recent letter stating he can live
4 with his cousin. The next reason for our denial
5 would be the Panel's belief that the inmate has
6 not yet sufficiently participated in self-help
7 programs. Also, the District Attorney's Office
8 responded to PC 3042 Notices. They are opposed to
9 a finding of parole suitability, as is the Los
10 Angeles Police Department. By most accounts,
11 Mr. Hernandez had a stable social history. He had
12 served honorably in the military, been discharged,
13 had gone to high school, had not graduated, but he
14 had been working. There is some use of alcohol
15 and marijuana. There's a contradiction I guess in
16 Mr. Hernandez's life because of all these positive
17 things and then he ends up murdering Mr. Sanchez
18 and now all of a sudden alcohol and marijuana are
19 part of his lifestyle. So there's really a
20 contradiction there. The Panel finds that the
21 inmate needs participation in self-help for a
22 variety of reasons. First of all, I really,
23 Mr. Hernandez, look at your ability to deal with
24 situations in an appropriate fashion when I look
25 at your lack of parole plans because here's a
26 situation where I can't help but project what you
27 **PETER HERNANDEZ C-03015 DECISION PAGE 3 1/6/05**

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1 did in 1977 on this situation. I don't know what
2 it is, if it's honor, if it's -- if it's respect,
3 I don't know what it is that's keeping you from
4 asking your family for support, if you don't want
5 to ask people. But that indicates you're not
6 willing to ask for help when you need it, and
7 that's a negative trait. You need to be able to
8 ask for help when you need it, that's how you
9 solve situations. And you need help here; you
10 need help from your family. Like I said before,
11 you've got the key to get out of here. We're not
12 going to let you out, no Panel's going to let you
13 out, with no offers of residence and no offers of
14 employment. The Panel commends Mr. Hernandez for
15 the fact that he's not had a 115 in six years,
16 almost seven years, that last one was February 19,
17 1998 for mutual combat, it was the last of four;
18 for the fact that he's not had a 128(a) counseling
19 chronos in four years, the last one December 31,
20 2000, the last of seven for disobeying staff.

21 He's to be commended for having acquired his GED
22 high school equivalency early on, for taking some
23 college courses, for completing data processing,
24 spending time in and/or completing basic
25 electronics and TV production. He's to be
26 commended for his recent participation in Impact,

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1 taking Emergency Management Institute or FEMA
2 courses, for the completion of bible
3 correspondence courses and unverified but his
4 self-reported participation in the Veterans Group
5 and this Pre-Release Group. He's certainly to be
6 commended for his work ethic. He has received
7 laudatory chronos while serving as the Protestant
8 chapel clerk, in receiving and release and in the
9 culinary kitchen as a clerk, which is his current
10 position. But these positive aspects do not yet
11 outweigh the factors of unsuitability. I do also
12 want to note for the record that the July 23, 2004
13 psychological report by Dr. Hewchuk is supportive
14 of release. We make the following
15 recommendations, Mr. Hernandez. One, that you
16 remain disciplinary-free; two, when it's available
17 to you, that you continue your participation in
18 self-help. I wish I could give you a 115 or a 128
19 for not having parole plans because maybe that
20 would spur you into taking some action. I don't
21 know what it's going to take. I don't know how
22 many times and how many ways to tell you, but it's
23 very important. And I wish you good luck.

24 **INMATE HERNANDEZ:** Just for the record, that
25 card is not 2003.

26 **PRESIDING COMMISSIONER LAWIN:** Which card?

27 **PETER HERNANDEZ** C-03015 DECISION PAGE 5 1/6/05

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1 INMATE HERNANDEZ: It's recent.

2 PRESIDING COMMISSIONER LAWIN: Right, this
3 Christmas.

4 INMATE HERNANDEZ: Yes.

5 PRESIDING COMMISSIONER LAWIN: I'm sorry,
6 December 2004, that's what I meant. I'm sorry.
7 Thank you.

8 DEPUTY COMMISSIONER MEJIA: Good luck to
9 you, sir.

10 INMATE HERNANDEZ: Thank you.

11 PRESIDING COMMISSIONER LAWIN: That
12 concludes this hearing. It is 12:43.

13 --oOo--

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23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON MAY - 6 2005

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 PETER HERNANDEZ C-03015 DECISION PAGE 6 1/6/05

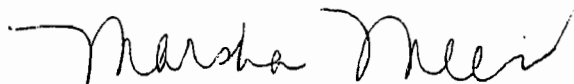
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**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, Marsha Mees, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 through 79, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of PETER HERNANDEZ, CDC No. C-03015 on JANUARY 6, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated January 21, 2005 at Sacramento County, California.



Marsha Mees
Transcriber
CAPITOL ELECTRONIC REPORTING

EXHIBIT "F"

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
2004 CALENDAR**

HERNANDEZ, PETER

C03015

I. COMMITMENT FACTORS:

- A. Life Crime:** Count 1: Murder First (PC 187), Count 2/3: Assault with Intent to Commit Murder, with Use of a Firearm (Pistol) (PC 217/12022.5): Sentence 7 years to Life. Case Number: A334928. Date received in CDC: 3/23/79. MEPD: 9/3/85. Victim: Tony Sanchez, age unknown.

1. **Summary of Crime:** On 4/25/77, at approximately 9:00 p.m., Peter Hernandez and co-defendant, Jose Montez, approached three Mexican/American males in a residential area in Los Angeles. Following a brief conversation, Hernandez pulled a gun from his coat, fired a shot at victim Tony Sanchez at point blank range, killing him with a shot to the heart. Victims Rosales and Rodriguez ran from the scene but were pursued by Hernandez who continued firing the gun, striking both men in the leg as crime partner Montez yelled, "get them, get them." After emptying the weapon, Hernandez and Montez returned to the van that Hernandez had been driving and fled from the scene. Hernandez was later identified by the wounded victims. He and Montez were apprehended at their residences on the following morning. Subsequent investigation revealed that Hernandez had attempted to purchase marijuana from the victims and, when advised that they had none, opened fire. Both Hernandez and Montez denied any involvement in the crime, maintaining this denial through three trials, the third of which resulted in Hernandez' conviction for the present case and Montez' conviction for Murder Second Degree. It was noted that all three victims were known gang members and that the motive for the crime was believed by the District Attorney's Office to have been gang related. Hernandez continued to maintain his innocence until exhaustion of the appeals process at which time he admitted his guilt. (Information acquired from the 6/15/88 Diagnostic Unit Evaluation, pg 2-3; POR, pg 5-7, and Appellate Decision dated 6/20/81, pgs 8-12, 14-15).

2. **Prisoner's Version:** In an interview for this report, Hernandez stated that his version of the offense summary remains the same as the one presented

INMATE COPY

HERNANDEZ, PETER

C03015

CTF-SOLEDAD

SENT TO I/M ON 9.3.04

in the report for his January, 1990 Subsequent Hearing #5. In that report, Hernandez stated the following:

On the evening of April 25, 1977, I was at a friend's house drinking beer while we talked about the upcoming Cinco De Mayo celebration being planned for the community the following month. During the meeting or sometime after, I was informed of some guys being responsible for the burglary of my sister's home. After the meeting, I decided to go find out who these guys were, hoping to recover my sister's property. A friend volunteered to come along with me since he knew some of the guys around the area where they hang out. We drove approximate five or six miles across town to what is known as the "West Side" of Los Angeles.

On the corner of 24th Street and Magnolia, I pulled to the side, and my friend called some guy over and asked him if he knew a guy named Tito. He said, "Yeah, he lives over there," pointing to a green house not too far from the opposite corner. We then went around the block, coming to a stop and parking in front of the green house. While I was parking, I saw three guys on the porch of the house. I told my companion to wait, that I'd be back. As I walked over to the gate, one of the guys went inside and another started to walk towards the front of the gate. The third guy just stayed on the front of the porch. As I stopped at the gate and watched the guy stop about ten feet from the gate, I asked him if he knew a guy named Tito, who I was told lived here. He said, "Who are you? What do you want with him?" or words to that affect. As I told him that I wanted to talk to Tito about some hot stuff that he was trying to sell, the guy I was talking to looked familiar, so I asked him if his name was Noe. He then looked surprised and said, "No". (Noe is a guy who I knew years ago when I was in junior high school; it turned out that this was the same guy.) After an exchange of words, a guy came running up from the corner, the same guy who had told me and my companion that Tito lived at this house. He walked up and said to Noe, "What's going on? These guys are looking for Tito." By then, the guy on the porch started walking towards us. Then Noe said, "Man, you better split. Get the fuck out of here." I said, "No, I want to talk to Tito." The guy from the porch got close to Noe and asked him what I wanted from Tito. After Noe told him, the guy pulled out a gun and pointed it towards me and told me in a very angry way that I'd better leave or he'd blow my head off. Noe then said, "Go, man, you don't belong around here." Being frightened by the gun, I said, "Okay, man, I'm going. I'm going." So we left.

My friend brought out the idea that he knew where to get a gun and that we should go back. My fright turned to anger, and I agreed. We drove around the neighborhood for awhile trying to find a gun. In the meantime,

I bought more beer, and we drank. Finally, we drove to some apartments where my friend got out and went inside. A few moments later, he came out and showed me a gun. I took the gun and asked him if he was loaded, and he said, "Yes". I put the gun inside my jacket pocket and drove back to find Tito. As we passed by the corner of 24th and Magnolia, we saw three guys not too far from the corner. They looked like the same guys we had seen earlier. I went around the block and parked right in front of them, across the street. I told my friend to wait, but he said that he would get out with me.

We both walked towards the guys who were standing on the sidewalk. As we walked, I had my hands in my jacket pockets. The guys looked us over and asked us what we wanted. I told them I was looking for Tito because I wanted to talk to him. One of them said, "I'm Tito. What do you want?". One of the other guys said something like, "Yeah, they were looking for you earlier." I told Tito that I wanted the stolen stuff that he had because it belonged to my sister, and I wanted it back. I told him that I didn't want any trouble. He looked at me and said, "Fuck you, man, who do you think you are?" He then began cursing in a threatening manner. He then started to charge at me, pulling his hands out from his pockets. I thought at the moment he was going for a gun. In a quick motion (I was trained and awarded the expert badge with the .45 caliber pistol in the U.S. Army), I pulled out my gun and shot him. I panicked for a while and, as the other guys ran, I began to shoot at them, too, chasing them a few yards before the gun went empty. Then my friend and I ran back to the van and left. I remember being very scared and my heart pumping faster than I could breathe.

3. **Aggravating/Mitigating Circumstances:**

a. **Aggravating Factors:**

- During the commission of the crime, the inmate had a opportunity to cease but instead continued.
- The manner in which the crime was committed created a potential for serious injury to persons other than the victims of the crime.
- There were multiple victims involved.
- Use of a weapon (pistol).
- The inmate was on probation at the time the crime was committed.

b. **Mitigating Factors:**

- Although the inmate was on probation he had a minimal history of criminal behavior.

B. Multiple Crime(s): N/A.

1. **Summary of Crime:** N/A.
2. **Prisoner's Version:** N/A.

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted.

B. Adult Convictions: Hernandez' arrest history began on 5/13/76 when he was arrested by the Los Angeles Police on a charge of Possession/Manufactured/Sell Dangerous Weapon, PC 12020(a). He was released on 5/14/76 having been detained only due to insufficient evidence. He was again arrested on 1/8/77 by Los Angeles Police on a charge of Robbery, PC 211(a). He pleaded guilty on 2/1/77 to Taking a Vehicle Without Owner's Consent and was sentenced to 36 months summary probation without supervision and a \$32.00 restitution. On 5/1/78 Hernandez was convicted on a misdemeanor charge of PC 484 and was sentenced to 24 months probation with four days in jail and 90 days jail suspended.

C. Personal Factors: On 8/17/54, Peter Hernandez Jr. was born in Las Cruces, Mexico, the second of two children of Peter Hernandez Sr. and the former Martha Rodriguez. Hernandez was raised by his mother in part due to his parents divorcing when he was two years old. Several years following her divorce, his mother entered a common-law relationship that was formalized in 1972. Hernandez claims he had a satisfactory relationship with all family members including his stepfather and two half-brothers. Hernandez reports that no other family member has an arrest record and there is no family history of mental illness. He notes that his stepfather was an alcoholic.

Hernandez attended Belmont High School but dropped out to enlist in the U.S. Army. He served in the Army from 2/73 until 2/76 and received an honorable discharge. He achieved the rank of E-4 and served seven months in Germany. While in the Army, Hernandez began the occasional use of marijuana and social use of alcohol. He subsequently began spending most of his off-duty time drinking. In 1975 he married Josie Garcia while still in the Army. The relationship produced one daughter, Zita. There is no evidence of any sexual deviation, physical or mental disorder.

III. POSTCONVICTION FACTORS:

- A. Special Programming/Accommodations:** N/A.
- B. Custody History:** Hernandez remains Medium A custody level and has been housed at CTF throughout this review period.
- C. Therapy and Self-Help Activities:** Since Hernandez' last BPT Hearing he has attended numerous Prison Fellowship Ministries Classes (Protestant Faith) and Impact Workshop's. (See Post Conviction Progress Report).

Hernandez stated he is currently on the waiting list for the following programs: In Cell Study Business Course, We Care Self-Help Group, and AA. Furthermore, Hernandez states he is a member of the Balance Reentry Activity Group (BRAG) and CTF Veterans Group (Army). Hernandez states he has tried to obtain documentation to verify his statements, but has been unsuccessful.

- D. Disciplinary History:** Hernandez continues to remain disciplinary free.
- E. Other:** Hernandez attended his Subsequent #11 Parole Consideration Hearing on 11/7/01. Parole was denied for 1 year. The Board recommended that Hernandez remains disciplinary free, and participate in self-help programs and group therapy.

IV. FUTURE PLANS:

- A. Residence:** Hernandez continues to plan to reside with his brother Michael and sister-in-law Kim Montez at 11150 Glen Oaks Boulevard, Unit 227, in Pacoima, California. His telephone number is (818) 686-1152.
- B. Employment:** Hernandez is certain that he will be able to secure employment with Marco Sanchez, a cousin who owns auto body/fender and mechanics shops in Rosemead and in San Fernando Valley. He would be employed for office clerical duties.
- C. Assessment:** In review of Hernandez parole plans, this counselor does not foresee any problems. However, it was recommended that he obtain updated support letters since his current ones are dated 1998.

V. USINS STATUS: N/A.

VI. SUMMARY:

- A.** Considering the commitment offense, prior prison record and prison adjustment this writer believes Hernandez would pose a low degree of threat to the public if released. Hernandez has been incarcerated for over 25 years on a seven to Life sentence. Hernandez has also been given a parole date twice and both times been revoked by the Governor. Although I have not had alot of interaction with Hernandez throughout the year, he has taken great steps in the right direction. He has remained disciplinary free, has adequate parole plans, and maintains a good rapport with staff and inmates. Hernandez has received laudatory chronos from Correctional Officers W. Cleaver, G. Lavelle and Reverne Lindsey. They state that his work performance, attitude, and attendance are excellent.

Hernandez has taken responsibility for his crime and has expressed deep remorse for what he has done. He fully intends to better himself while incarcerated and will continue working on self-improvement upon his release.

A combination of the above factors, as well as support letters from family and friends, help point Hernandez in the direction of a successful parole.

- B.** Prior to release the prisoner could benefit from:
1. Continuing to be disciplinary free.
 2. Participation in self-help and therapy programs.
- C.** This report is based upon a thorough review of the inmate's Central File and a (1) hour interview with Hernandez.
- D.** Per the Olson Decision, Hernandez was afforded an opportunity to review his Central File. (Refer to CDC 128B dated 8/10/04 in the General Chrono Section of the Central File).
- E.** No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.


LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

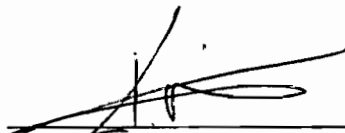
TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.


POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
3/04 to 8/04			<p>PLACEMENT: Remained at CTF in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted this period.</p> <p>ACADEMICS: None noted this period.</p> <p>WORK RECORD: Hernandez was a Religious Clerk from 8/22/02 thru 7/14/04 and received above average ratings verified by CDC 101 dated 1/17/03. On 7/15/04 Hernandez was assigned in the Culinary as a Clerk.</p> <p>GROUP ACTIVITIES: Participated in Prison Fellowship verified by a certificate dated 6/5/04.</p> <p>PSYCH. TREATMENT: None noted during this period.</p> <p>PRISON BEHAVIOR: Hernandez remained disciplinary free during this period.</p> <p>OTHER: None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE 			DATE 8-31-04

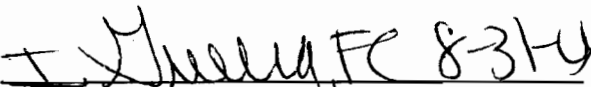
HERNANDEZ

C03015

CTF-SOLEDAD


K. Heinly 8-31-04
Date
Correctional Counselor I


D. Pherigo 8-31-04
Date
Correctional Counselor II


I. Guerra 8-31-04
Date
Facility Captain

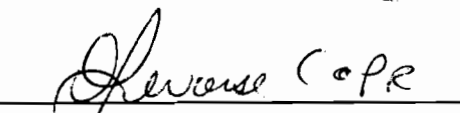

D. S. Levorse 9-1-04
Date
Classification and Parole Representative

EXHIBIT "G"

EXHIBIT "G"

The Judge Division
①

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVYN COLEMAN,

Petitioner,

No. CIV S-96-0783 LKK PAN P

vs.

BOARD OF PRISON TERMS, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On December 22, 2004, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Respondent has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

(2)

Judges decision

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 22, 2004, are adopted in full; and

2. The petition for habeas corpus will be granted unless, within 60 days, respondent provides a fair parole suitability hearing, conducted by a board free of any prejudice stemming from a gubernatorial policy against parole for murderers.

DATED: May 19, 2005.

/s/Lawrence K. Karlton
LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

bd

United States District Court
for the
Eastern District of California
December 22, 2004

* * CERTIFICATE OF SERVICE * *

2:96-cv-00783

Coleman

v.

Board of Prison Term

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 22, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Tami M Warwick	TM/PAN
Attorney General's Office for the State of California	
PO Box 944255	AR/LKK
1300 I Street	
Suite 125	
Sacramento, CA 94244-2550	

Ann Catherine McClintock
Federal Defender
801 I Street
Third Floor
Sacramento, CA 95814

Jack L. Wagner, Clerk

BY: 
Deputy Clerk

The case pages (1-11)

FILED

DEC 22 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

United States District Court
Eastern District of California

Melvyn H. Coleman, No. Civ. S-96-0783 LKK PAN P
Petitioner, Findings and Recommendations
vs.
Board of Prison Terms, et al.,
Respondents.

-oOo-

Petitioner seeks a writ of habeas corpus.

In his November 14, 1997, second amended petition petitioner claims his federal due process guarantee was violated because the California Board of Prison Terms (Board) has failed to conduct a fair parole suitability hearing.

In 1974 petitioner was convicted of first degree murder, attempted murder, first degree robbery, first degree burglary and other charges. The victims, Mr. And Mrs. Stewart, returned to their home while petitioner was burglarizing it; he then

the case

1 approached before they got out of their car and robbed and shot
2 them, killing Mr. Siewart and seriously wounding Mrs. Siewart.
3 Petitioner had a prior juvenile record.

4 Under California law, a prisoner including a convicted
5 murderer serving an indeterminate term (i.e., seven years to
6 life) is entitled to a hearing before a panel composed of members
7 of the Board to determine his suitability for parole. By
8 statute, parole at some point normally is appropriate and the
9 Board "shall set a release date unless it determines that the
10 gravity of the current convicted offense or offenses, or the
11 timing and gravity of current or past convicted offense or
12 offenses, is such that consideration of the public safety
13 requires a more lengthy period of incarceration. . . ." Cal.
14 Penal Code § 3041(b). Procedures governing suitability hearings
15 are set forth in Penal Code § 3041.5 (providing prisoners with
16 notice and an opportunity to be heard and requiring a written
17 statement of reasons if the panel refuses to set a parole date).
18 Regulations prescribe factors for the panel to consider in
19 determining whether each prisoner is suitable or unsuitable for
20 parole. 15 CAC § 2281.¹

21
22 ¹ Factors supporting a finding of unsuitability include: (1) whether the
23 prisoner's offense for which he is confined was committed in an "especially
24 heinous, atrocious or cruel manner"; (2) the prisoner's record of violence prior
25 to the offense; (3) whether the prisoner has an unstable social history; (4)
26 whether the prisoner has committed sadistic sexual offenses; (5) whether the
prisoner has a lengthy history of severe mental problems related to the offense;
and (6) whether the prisoner has engaged in serious misconduct in prison or jail.
Factors supporting a finding of suitability include: (1) whether the prisoner has
a juvenile record; (2) whether the prisoner has experienced reasonably stable
relationships with others; (3) whether the prisoner shows signs of remorse; (4)

the case

1 Petitioner presents evidence that under Governors Wilson and
 2 Davis the Board disregarded regulations ensuring fair suitability
 3 hearings and instead operated under a sub rosa policy that all
 4 murderers be found unsuitable for parole. The record shows that
 5 between 1992 and 1998 less than one percent of the prisoners in
 6 this group were released on parole. During the previous period
 7 the parole rate had been about four percent. Petitioner presents
 8 sworn testimony that the policy was enforced by (1) appointing
 9 Board members less likely to grant parole and more willing to
 10 disregard their statutory duty; (2) removing Board members more
 11 likely to grant parole; (3) reviewing decisions finding a
 12 prisoner suitable and setting a new hearing before a different
 13 panel; (4) scheduling rescission hearings for prisoners who had
 14 been granted a parole date; (5) re-hearing favorable rescission
 15 proceedings and hand-picking panels to ensure the desired
 16 outcome; (6) panel members agreeing upon an outcome in advance of
 17 the hearing; and (7) gubernatorial reversal of favorable parole
 18 decisions. See e.g., declaration of former BPT Commissioner
 19 Albert Leddy (Leddy) paras. 5, 6, 8-17, 20 (attached as Ex. 17 to
 20 petitioner's March 27, 2003, motion for discovery); deposition of
 21 Leddy taken in In re Fortin, et al., San Diego Superior Court

22
 23 whether the prisoner committed his crime as the result of significant stress in
 24 his life; (5) whether the prisoner suffered from Battered Woman Syndrome when she
 25 committed the crime; (6) whether the prisoner lacks any significant history of
 26 violent crime; (7) whether the prisoner's present age reduces the probability of
 recidivism; (8) whether the prisoner has made realistic plans for release or has
 developed marketable skills that can be put to use on release; and (9) whether
 the prisoner's institutional activities indicate an enhanced ability to function
 within the law upon release. 15 CAC § 2281.

the case

1 case number HSC10279 at 18-19, 47-50, 56-59, 61-63, 65-66, 88-89,
2 95, 97-99, 102, 106, 110, 118 & 126 (attached as Ex. 10 to
3 petitioner's March 27, 2003, motion for discovery); deposition of
4 former BPT Commissioner Edmund Tong taken in Kimble v. Cal. BPT,
5 C.D. Cal. case number CV 97-2752 at 42-43, 45-47, 71, 73, 80-82,
6 85-86, 96, 103, 105, 107 & 109 (lodged December 30, 2003).²

7 The unrefuted record shows the no-parole-for-murderers
8 policy existed and continued under Governor Davis. In In re
9 Rosencrantz, the California Supreme Court took note of evidence
10 presented in the state trial court establishing that the Board
11 held 4800 parole suitability hearings between January 1999
12 through April 2001, granting parole to 48 murderers (one
13 percent). 29 Cal. 4th 616, 685 (2003). Of those 48, the
14 governor reversed 47 of the Board's decisions and only one
15 murderer out of 4800 actually was released on parole. Id.
16 Petitioner in Rosenkrantz also submitted evidence of the
17 following interview of Governor Davis reflected in the April 9,
18 1999, edition of the Los Angeles Times: " . . . [T]he governor
19 was adamant that he believes murderers - even those with second-
20 degree convictions - should serve at least a life sentence in
21 prison. [Para.] Asked whether extenuating circumstances should

22
23 ² Meanwhile, the annual cost to taxpayers of conducting these "pro forma"
24 hearings is enormous, amounting to millions of dollars per year. See Exhibit 7
25 to petitioner's March 27, 2003, motion for discovery (California Legislative
26 Analyst's Office - Analysis of the 2000-01 Budget Bill for the Board of Prison
Terms criticizing proposed \$19 million annual budget and noting huge cost of
additional incarceration resulting from no-parole policy).

The Case

1 be a factor in murder sentences, the governor was blunt: "No.
2 Zero . . . They must not have been listening when I was
3 campaigning. . . . If you take someone else's life, forget it.
4 I just think people dismiss what I said in the campaign as either
5 political hyperbole or something that I would back away from . .
6 . . . We are doing exactly what we said we were going to do.""
7 29 Cal. 4th at 684.

8 Respondent does not refute the alleged facts. Instead,
9 respondent argues that, assuming ^{some} ~~arguendo~~ prisoners in California
10 have an interest in a parole date protected by the due process
11 clause, constitutional requirements are met so long as there is
12 "some evidence" supporting the findings petitioner is unsuitable.
13 See Oppo. at 7:20 (so long as "some evidence" standard is met,
14 "the Board decisions could not have been arbitrary.") For the
15 reasons explained, this court rejects that claim. As this court
16 previously has found, there always will be "some evidence" that
17 can be used to explain a denial or rescission under the
18 circumstances. Federal due process requires more.

19 California's parole scheme gives rise to a protected liberty
20 interest in release on parole. McQuillion v. Duncan, 306 F.3d
21 895, 902 (2002); Jancsek v. Oregon Bd. of Parole, 833 F.2d 1389,
22 1390 (9th Cir. 1987); Greenholtz v. Inmates of Nebraska Penal &
23 Correctional Complex, 442 U.S. 1 (1979); Biggs v. Terhune, 334
24
25
26

the case

1 F.3d 910, 915 (9th Cir. 2003); In re Rosenkrantz, 29 Cal. 4th 616
2 (2003).³

3 Therefore, petitioner is entitled to the process outlined in
4 Greenholtz, viz., notice, opportunity to be heard, a statement of
5 reasons for decision, and limited right to call and cross-examine
6 witnesses. The determination that petitioner is unsuitable for
7 parole must be supported by some evidence bearing some indicia of
8 reliability.

9 These guarantees do not exhaust petitioner's right to due
10 process. The fundamental core of due process is protection
11 against arbitrary action:

12 The principal and true meaning of the phrase has never
13 been more tersely or accurately stated than by Mr.
14 Justice Johnson, in Bank of Columbia v. Okely, 17 U.S.
15 235, 4 Wheat. 235-244, 4 L.Ed. 449 [(1819)]: "As to the
16 words from Magna Charta, incorporated into the
17 Constitution of Maryland, after volumes spoken and
18 written with a view to their exposition, the good sense
19 of mankind has at last settled down to this: that they
20 were intended to secure the individual from the
21 arbitrary exercise of the powers of government,
22 unrestrained by the established principles of private
23 right and distributive justice."

19 Hurtado v. California, 110 U.S. 516, 527, (1884). "The
20 concessions of Magna Charta were wrung from the king as
21 guaranties against the oppressions and usurpations of his
22

23 ³ That is so because the parole statute, Penal Code § 3041, uses mandatory
24 language ("The panel or board shall set a release date unless it determines"
25 further incarceration is necessary in the interest of public safety) which
26 "creates a presumption that parole release will be granted," unless the
statutorily defined determinations are made. Board of Pardons v. Allen, 482 U.S.
369, 378 (1987) (quoting Greenholtz, 442 U.S. at 12). As of 1988, by amendment
of the state constitution, a parole date given can be withdrawn by the Governor
under the same factors considered by the Board.

the case

1 prerogative." Id. at 531. "The touchstone of due process is
2 protection of the individual against arbitrary action of
3 government." Wolff v. McDonnell, 418 U.S. 539, 558 (1974),
4 citing Dent v. West Virginia, 129 U.S. 114 (1889).

5 A government official's arbitrary and capricious exercise of
6 his authority violates the essence of due process, contrary to
7 centuries of Anglo-American jurisprudence. See Yick Wo v.
8 Hopkins, 118 U.S. 356, 369 (1886) ("When we consider the nature
9 and the theory of our institutions of government, the principles
10 upon which they are supposed to rest, and review the history of
11 their development, we are constrained to conclude that they do
12 not mean to leave room for the play and action of purely personal
13 and arbitrary power."); United States v. Lee, 106 U.S. 196, 220
14 (1882) ("No man in this country is so high that he is above the
15 law. No officer of the law may set that law at defiance with
16 impunity. All the officers of the government from the highest to
17 the lowest, are creatures of the law and are bound to obey it.
18 It is the only supreme power in our system of government, and
19 every man who by accepting office participates in its functions
20 is only the more strongly bound to submit to that supremacy, and
21 to observe the limitations which it imposes upon the exercise of
22 the authority which it gives."); U.S. v. Nixon, 418 U.S. 683,
23 695-96 (1974) (rule of law is "historic commitment"); Accardi v.
24 O'Shaughnessy, 347 U.S. 260, 267-68 (1954) (Attorney General must
25 abide by regulations and cannot dictate immigration board's
26 exercise of discretion in decision on application to suspend

the case

1 deportation; remedy is new hearing where board will exercise it's
2 discretion free from bias).

3 Concomitant to the guarantee against arbitrary and
4 capricious state action is the right to a fact-finder who has not
5 predetermined the outcome of a hearing. See Withrow v. Larkin,
6 421 U.S. 35 (1975) (a fair trial in a fair tribunal is a basic
7 requirement of due process, and this rule applies to
8 administrative agencies which adjudicate as well as to courts);
9 Edwards v. Balisok, 520 U.S. 641 (1997) (recognizing due process
10 claim based on allegations that prison disciplinary hearing
11 officer was biased and would suppress evidence of innocence);
12 Bakalis v. Golembeski, 35 F.3d 318, 326 (7th Cir. 1994) (a
13 decision-making body "that has prejudged the outcome cannot
14 render a decision that comports with due process").

15 Courts too numerous to list have recognized that the right
16 to a disinterested decision-maker, who has not prejudged the
17 case, is part of the fundamental guarantee against arbitrary and
18 capricious government conduct in the California parole context.
19 See, e.g., Rosenkrantz, 29 Cal. 4th at 677 (parole decision "must
20 reflect an individualized consideration of the specified criteria
21 and cannot be arbitrary and capricious"); In re Ramirez, 94 Cal.
22 App. 4th 549, 563 (2001) ("some evidence" standard is "only one
23 aspect of judicial review for compliance with minimum standards
24 of due process" (citing Balisok) and Board violates due process
25 if its decision is "arbitrary and capricious"); In re Minnis, 7
26 Cal. 3d 639 (1972) (blanket no-parole policy as to certain

the case

1 category of prisoners is illegal); In re Morrall, 102 Cal. App.
2 4th 280 (2003) (same). The guarantee of neutral parole officials
3 in a suitability hearing is just as fundamental as the right to a
4 neutral judge in a court proceeding. Compare Sellars v.
5 Procunier, 641 F.2d 1295 (9th Cir. 1981) (holding that California
6 parole officials, analogous to judges, are entitled to absolute
7 immunity).

8 The Ninth Circuit previously has acknowledged California
9 inmates' due process right to parole consideration by neutral
10 decision-makers. See O'Brenski v. Maas, 915 F.2d 418, 422 (9th
11 Cir. 1990). In that case the appellate court found that a
12 neutral parole panel at a new hearing would reach the same
13 outcome and so denied relief. The record in this case simply
14 will not permit the same conclusion. The requirement of an
15 impartial decision-maker transcends concern for diminishing the
16 likelihood of error. As the Supreme Court clearly held in
17 Balisok a decision made by a fact-finder who has predetermined
18 the outcome is per se invalid -- even where there is ample
19 evidence to support it. 520 U.S. at 648.

20 Petitioner presents a convincing case that a blanket policy
21 against parole for murderers prevented him from obtaining a
22 parole suitability determination made after a fair hearing.
23 Respondent offers nothing to counter petitioner's showing.

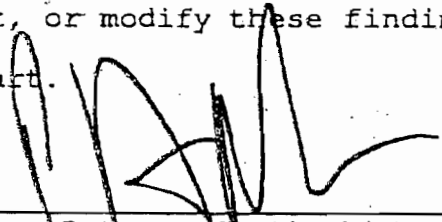
24 Accordingly, the court hereby recommends that the petition
25 for habeas corpus be granted unless, within 60 days of the
26 district court's adoption of these recommendations, respondent

the case

1 provides a fair parole suitability hearing, conducted by a board
2 free of any prejudice stemming from a gubernatorial policy
3 against parole for murderers.

4 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these
5 findings and recommendations are submitted to the United States
6 District Judge assigned to this case. Within 20 days after being
7 served with these findings and recommendations, respondent may
8 file written objections. The document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations."
10 The district judge may accept, reject, or modify these findings
11 and recommendations in whole or in part.

12 Dated: DEC 21 2004


13
14 Peter A. Nowinski
Magistrate Judge

**BOARD OF PRISON TERMS
LIFE PRISONER HEARING DECISION FACE SHEET**

STATE OF CALIFORNIA

☐ PAROLE GRANTED - (YES)

 CDC: Do not release prisoner before
Governor's review
Records Use Only

Parole Release Date

YR MO DAY

Attach Prison Calculation Sheet

☒ PAROLE DENIED - (NO)

One Year. 2006 calendar.
☐ AGREED UNSUITABLE (Attach 1001A Form) FOR: _____ YEAR(S)

☐ HEARING POSTPONED/REASON: _____
PANEL RECOMMENDATIONS AND REQUESTS**The Board Recommends:**
☐ No more 115's or 128A's ☒ Stay discipline free

☐ Work to reduce custody level ☐ Learn a trade*

☒ Earn positive chronos

☒ Get self-help* ☐ Get therapy*

☐ Get a GED*

☐ Recommend transfer to _____

☐ Other _____

*These programs are recommended if they are offered at your prison and you are eligible/able to participate.

Penal Code 3042 Notices ☒ Sent Date: 11-09-2004

Commitment Offense(s)

P187MURDER 1ST

Code(s)

Crime(s)

A5267641

Case #(s)

Count #(s)

 Date Inmate Came to CDC
3/23/79

 Date Life Term Began
3/23/79

 Minimum Eligible Parole Date
9/3/85

☐ Initial Hearing

☒ Subsequent (Hearing No.) #12

Date of Last Hearing _____

CDC Representative D.S. LEVORSE, C&PR

Attorney for Prisoner M. TARDIFF

Address

D.A. Representative A. SOUSA

County LA

 This form and the Board's decision at the end of the hearing is only proposed and NOT FINAL. It will not become final until it is reviewed.

 Chair *Sharon Lawin*

 Date *04/06/05*

 Panel Member *Robert [unclear]*

 Date *04/06/05*
~~Panel Member~~~~Date~~

NAME	CDC #	INSTITUTION	CALENDAR	DATE
HERNANDEZ, PETER	C-03015	CTF-SOLEDAD	JAN. 2005	1/6/05

1P

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CALIFORNIA BOARD OF PRISON TERMS

D E C I S I O N

DEPUTY COMMISSIONER MEJIA: We're back on record for our decision, Mr. Hernandez

PRESIDING COMMISSIONER LAWIN: Thank you.

All parties have returned to the room. The Panel has reviewed all information received from the public and relied on the following circumstances in concluding that you, Mr. Hernandez, are not yet suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. This is a one year denial. The denial is based certainly in part by or on rather the commitment offense which was the shooting death of Tony Sanchez. He was shot one time by the inmate. According to the inmate's version there had been a confrontation when the inmate was trying to retrieve property that had been stolen from his sister and he had been informed that Mr. Sanchez had the property and was trying to sell it. As I said, there was one earlier confrontation. The inmate left, went and got a gun and went back to the location, shot Mr. Sanchez to death, wounding the other occupants or his friends that were there at the time. The inmate paints this to be a -- essentially that he

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1 was -- he went there to retrieve this property and
2 that he first saw a weapon when he had the first
3 confrontation with Mr. Sanchez's companions. The
4 victims instead state that Mr. Hernandez went --
5 asked if they had any -- a lid, asked if they had
6 any marijuana. When they said, no, he left and
7 then returned and essentially began firing, that
8 there was not this -- the confrontation and the
9 way that Mr. Hernandez paints it. Regardless,
10 Mr. Sanchez lost his life for the most trivial of
11 reasons. Whether it was to retrieve property, to
12 protect his honor, his family's honor, whatever it
13 happens to have been, Mr. Sanchez should not have
14 lost his life. And the crime shows a clear
15 disregard for the life and suffering of others as
16 there were multiple victims involved in the same
17 incident. And the crime was carried out in a
18 cruel fashion on unsuspecting victims. The next
19 reason for our denial would be the inmate's parole
20 plans. He does not have reasonable parole plans.
21 He says he'll live with a brother. We have no
22 letters of support for a number of years. He says
23 that he will work for a cousin. Again, letters
24 are very old. Yes, there has been a history of
25 family support, but nothing recent. We do see
26 that he maintains contact. There's a Christmas

1 card with a postmark of 2003, but nothing to
2 indicate that he's welcome to live with his
3 brother nor any recent letter stating he can live
4 with his cousin. The next reason for our denial
5 would be the Panel's belief that the inmate has
6 not yet sufficiently participated in self-help
7 programs. Also, the District Attorney's Office
8 responded to PC 3042 Notices. They are opposed to
9 a finding of parole suitability, as is the Los
10 Angeles Police Department. By most accounts,
11 Mr. Hernandez had a stable social history. He had
12 served honorably in the military, been discharged,
13 had gone to high school, had not graduated, but he
14 had been working. There is some use of alcohol
15 and marijuana. There's a contradiction I guess in
16 Mr. Hernandez's life because of all these positive
17 things and then he ends up murdering Mr. Sanchez
18 and now all of a sudden alcohol and marijuana are
19 part of his lifestyle. So there's really a
20 contradiction there. The Panel finds that the
21 inmate needs participation in self-help for a
22 variety of reasons. First of all, I really,
23 Mr. Hernandez, look at your ability to deal with
24 situations in an appropriate fashion when I look
25 at your lack of parole plans because here's a
26 situation where I can't help but project what you
27 **PETER HERNANDEZ C-03015 DECISION PAGE 3 1/6/05**

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1 did in 1977 on this situation. I don't know what
2 it is, if it's honor, if it's -- if it's respect,
3 I don't know what it is that's keeping you from
4 asking your family for support, if you don't want
5 to ask people. But that indicates you're not
6 willing to ask for help when you need it, and
7 that's a negative trait. You need to be able to
8 ask for help when you need it, that's how you
9 solve situations. And you need help here; you
10 need help from your family. Like I said before,
11 you've got the key to get out of here. We're not
12 going to let you out, no Panel's going to let you
13 out, with no offers of residence and no offers of
14 employment. The Panel commends Mr. Hernandez for
15 the fact that he's not had a 115 in six years,
16 almost seven years, that last one was February 19,
17 1998 for mutual combat, it was the last of four;
18 for the fact that he's not had a 128(a) counseling
19 chronos in four years, the last one December 31,
20 2000, the last of seven for disobeying staff.

21 He's to be commended for having acquired his GED
22 high school equivalency early on, for taking some
23 college courses, for completing data processing,
24 spending time in and/or completing basic
25 electronics and TV production. He's to be
26 commended for his recent participation in Impact,

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1 taking Emergency Management Institute or FEMA
2 courses, for the completion of bible
3 correspondence courses and unverified but his
4 self-reported participation in the Veterans Group
5 and this Pre-Release Group. He's certainly to be
6 commended for his work ethic. He has received
7 laudatory chronos while serving as the Protestant
8 chapel clerk, in receiving and release and in the
9 culinary kitchen as a clerk, which is his current
10 position. But these positive aspects do not yet
11 outweigh the factors of unsuitability. I do also
12 want to note for the record that the July 23, 2004
13 psychological report by Dr. Hewchuk is supportive
14 of release. We make the following
15 recommendations, Mr. Hernandez. One, that you
16 remain disciplinary-free; two, when it's available
17 to you, that you continue your participation in
18 self-help. I wish I could give you a 115 or a 128
19 for not having parole plans because maybe that
20 would spur you into taking some action. I don't
21 know what it's going to take. I don't know how
22 many times and how many ways to tell you, but it's
23 very important. And I wish you good luck.

24 **INMATE HERNANDEZ:** Just for the record, that
25 card is not 2003.

26 **PRESIDING COMMISSIONER LAWIN:** Which card?

27 **PETER HERNANDEZ** C-03015 DECISION PAGE 5 1/6/05

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1 INMATE HERNANDEZ: It's recent.

2 PRESIDING COMMISSIONER LAWIN: Right, this
3 Christmas.

4 INMATE HERNANDEZ: Yes.

5 PRESIDING COMMISSIONER LAWIN: I'm sorry,
6 December 2004, that's what I meant. I'm sorry.
7 Thank you.

8 DEPUTY COMMISSIONER MEJIA: Good luck to
9 you, sir.

10 INMATE HERNANDEZ: Thank you.

11 PRESIDING COMMISSIONER LAWIN: That
12 concludes this hearing. It is 12:43.

13 --oOo--

14

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22

23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON MAY - 6 2005

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 PETER HERNANDEZ C-03015 DECISION PAGE 6 1/6/05

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**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, Marsha Mees, a duly designated transcriber, CAPITOL ELECTRONIC REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 through 79, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of PETER HERNANDEZ, CDC No. C-03015 on JANUARY 6, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-captioned matter and have no interest in the outcome of the hearing.

Dated January 21, 2005 at Sacramento County, California.



Marsha Mees
Transcriber
CAPITOL ELECTRONIC REPORTING

EXHIBIT "F"

**LIFE PRISONER EVALUATION REPORT
SUBSEQUENT PAROLE CONSIDERATION HEARING
2004 CALENDAR**

HERNANDEZ, PETER

C03015

I. COMMITMENT FACTORS:

- A. Life Crime:** Count 1: Murder First (PC 187), Count 2/3: Assault with Intent to Commit Murder, with Use of a Firearm (Pistol) (PC 217/12022.5): Sentence 7 years to Life. Case Number: A334928. Date received in CDC: 3/23/79. MEPD: 9/3/85. Victim: Tony Sanchez, age unknown.

1. **Summary of Crime:** On 4/25/77, at approximately 9:00 p.m., Peter Hernandez and co-defendant, Jose Montez, approached three Mexican/American males in a residential area in Los Angeles. Following a brief conversation, Hernandez pulled a gun from his coat, fired a shot at victim Tony Sanchez at point blank range, killing him with a shot to the heart. Victims Rosales and Rodriguez ran from the scene but were pursued by Hernandez who continued firing the gun, striking both men in the leg as crime partner Montez yelled, "get them, get them." After emptying the weapon, Hernandez and Montez returned to the van that Hernandez had been driving and fled from the scene. Hernandez was later identified by the wounded victims. He and Montez were apprehended at their residences on the following morning. Subsequent investigation revealed that Hernandez had attempted to purchase marijuana from the victims and, when advised that they had none, opened fire. Both Hernandez and Montez denied any involvement in the crime, maintaining this denial through three trials, the third of which resulted in Hernandez' conviction for the present case and Montez' conviction for Murder Second Degree. It was noted that all three victims were known gang members and that the motive for the crime was believed by the District Attorney's Office to have been gang related. Hernandez continued to maintain his innocence until exhaustion of the appeals process at which time he admitted his guilt. (Information acquired from the 6/15/88 Diagnostic Unit Evaluation, pg 2-3; POR, pg 5-7, and Appellate Decision dated 6/20/81, pgs 8-12, 14-15).

2. **Prisoner's Version:** In an interview for this report, Hernandez stated that his version of the offense summary remains the same as the one presented

HERNANDEZ, PETER

C03015

CTF-SOLEDAD

SENT TO I/M ON 9.3.04

INMATE COPY

in the report for his January, 1990 Subsequent Hearing #5. In that report, Hernandez stated the following:

On the evening of April 25, 1977, I was at a friend's house drinking beer while we talked about the upcoming Cinco De Mayo celebration being planned for the community the following month. During the meeting or sometime after, I was informed of some guys being responsible for the burglary of my sister's home. After the meeting, I decided to go find out who these guys were, hoping to recover my sister's property. A friend volunteered to come along with me since he knew some of the guys around the area where they hang out. We drove approximate five or six miles across town to what is known as the "West Side" of Los Angeles.

On the corner of 24th Street and Magnolia, I pulled to the side, and my friend called some guy over and asked him if he knew a guy named Tito. He said, "Yeah, he lives over there," pointing to a green house not too far from the opposite corner. We then went around the block, coming to a stop and parking in front of the green house. While I was parking, I saw three guys on the porch of the house. I told my companion to wait, that I'd be back. As I walked over to the gate, one of the guys went inside and another started to walk towards the front of the gate. The third guy just stayed on the front of the porch. As I stopped at the gate and watched the guy stop about ten feet from the gate, I asked him if he knew a guy named Tito, who I was told lived here. He said, "Who are you? What do you want with him?" or words to that affect. As I told him that I wanted to talk to Tito about some hot stuff that he was trying to sell, the guy I was talking to looked familiar, so I asked him if his name was Noe. He then looked surprised and said, "No". (Noe is a guy who I knew years ago when I was in junior high school; it turned out that this was the same guy.) After an exchange of words, a guy came running up from the corner, the same guy who had told me and my companion that Tito lived at this house. He walked up and said to Noe, "What's going on? These guys are looking for Tito." By then, the guy on the porch started walking towards us. Then Noe said, "Man, you better split. Get the fuck out of here." I said, "No, I want to talk to Tito." The guy from the porch got close to Noe and asked him what I wanted from Tito. After Noe told him, the guy pulled out a gun and pointed it towards me and told me in a very angry way that I'd better leave or he'd blow my head off. Noe then said, "Go, man, you don't belong around here." Being frightened by the gun, I said, "Okay, man, I'm going. I'm going." So we left.

My friend brought out the idea that he knew where to get a gun and that we should go back. My fright turned to anger, and I agreed. We drove around the neighborhood for awhile trying to find a gun. In the meantime,

I bought more beer, and we drank. Finally, we drove to some apartments where my friend got out and went inside. A few moments later, he came out and showed me a gun. I took the gun and asked him if he was loaded, and he said, "Yes". I put the gun inside my jacket pocket and drove back to find Tito. As we passed by the corner of 24th and Magnolia, we saw three guys not too far from the corner. They looked like the same guys we had seen earlier. I went around the block and parked right in front of them, across the street. I told my friend to wait, but he said that he would get out with me.

We both walked towards the guys who were standing on the sidewalk. As we walked, I had my hands in my jacket pockets. The guys looked us over and asked us what we wanted. I told them I was looking for Tito because I wanted to talk to him. One of them said, "I'm Tito. What do you want?". One of the other guys said something like, "Yeah, they were looking for you earlier." I told Tito that I wanted the stolen stuff that he had because it belonged to my sister, and I wanted it back. I told him that I didn't want any trouble. He looked at me and said, "Fuck you, man, who do you think you are?" He then began cursing in a threatening manner. He then started to charge at me, pulling his hands out from his pockets. I thought at the moment he was going for a gun. In a quick motion (I was trained and awarded the expert badge with the .45 caliber pistol in the U.S. Army), I pulled out my gun and shot him. I panicked for a while and, as the other guys ran, I began to shoot at them, too, chasing them a few yards before the gun went empty. Then my friend and I ran back to the van and left. I remember being very scared and my heart pumping faster than I could breathe.

3. **Aggravating/Mitigating Circumstances:**

a. **Aggravating Factors:**

- During the commission of the crime, the inmate had a opportunity to cease but instead continued.
- The manner in which the crime was committed created a potential for serious injury to persons other than the victims of the crime.
- There were multiple victims involved.
- Use of a weapon (pistol).
- The inmate was on probation at the time the crime was committed.

b. **Mitigating Factors:**

- Although the inmate was on probation he had a minimal history of criminal behavior.

B. Multiple Crime(s): N/A.

1. **Summary of Crime:** N/A.

2. **Prisoner's Version:** N/A.

II. PRECONVICTION FACTORS:

A. Juvenile Record: None noted.

B. Adult Convictions: Hernandez' arrest history began on 5/13/76 when he was arrested by the Los Angeles Police on a charge of Possession/Manufactured/Sell Dangerous Weapon, PC 12020(a). He was released on 5/14/76 having been detained only due to insufficient evidence. He was again arrested on 1/8/77 by Los Angeles Police on a charge of Robbery, PC 211(a). He pleaded guilty on 2/1/77 to Taking a Vehicle Without Owner's Consent and was sentenced to 36 months summary probation without supervision and a \$32.00 restitution. On 5/1/78 Hernandez was convicted on a misdemeanor charge of PC 484 and was sentenced to 24 months probation with four days in jail and 90 days jail suspended.

C. Personal Factors: On 8/17/54, Peter Hernandez Jr. was born in Las Cruces, Mexico, the second of two children of Peter Hernandez Sr. and the former Martha Rodriguez. Hernandez was raised by his mother in part due to his parents divorcing when he was two years old. Several years following her divorce, his mother entered a common-law relationship that was formalized in 1972. Hernandez claims he had a satisfactory relationship with all family members including his stepfather and two half-brothers. Hernandez reports that no other family member has an arrest record and there is no family history of mental illness. He notes that his stepfather was an alcoholic.

Hernandez attended Belmont High School but dropped out to enlist in the U.S. Army. He served in the Army from 2/73 until 2/76 and received an honorable discharge. He achieved the rank of E-4 and served seven months in Germany. While in the Army, Hernandez began the occasional use of marijuana and social use of alcohol. He subsequently began spending most of his off-duty time drinking. In 1975 he married Josie Garcia while still in the Army. The relationship produced one daughter, Zita. There is no evidence of any sexual deviation, physical or mental disorder.

III. POSTCONVICTION FACTORS:

- A. **Special Programming/Accommodations:** N/A.
- B. **Custody History:** Hernandez remains Medium A custody level and has been housed at CTF throughout this review period.
- C. **Therapy and Self-Help Activities:** Since Hernandez' last BPT Hearing he has attended numerous Prison Fellowship Ministries Classes (Protestant Faith) and Impact Workshop's. (See Post Conviction Progress Report).

Hernandez stated he is currently on the waiting list for the following programs: In Cell Study Business Course, We Care Self-Help Group, and AA. Furthermore, Hernandez states he is a member of the Balance Reentry Activity Group (BRAG) and CTF Veterans Group (Army). Hernandez states he has tried to obtain documentation to verify his statements, but has been unsuccessful.

- D. **Disciplinary History:** Hernandez continues to remain disciplinary free.
- E. **Other:** Hernandez attended his Subsequent #11 Parole Consideration Hearing on 11/7/01. Parole was denied for 1 year. The Board recommended that Hernandez remains disciplinary free, and participate in self-help programs and group therapy.

IV. FUTURE PLANS:

- A. **Residence:** Hernandez continues to plan to reside with his brother Michael and sister-in-law Kim Montez at 11150 Glen Oaks Boulevard, Unit 227, in Pacoima, California. His telephone number is (818) 686-1152.
- B. **Employment:** Hernandez is certain that he will be able to secure employment with Marco Sanchez, a cousin who owns auto body/fender and mechanics shops in Rosemead and in San Fernando Valley. He would be employed for office clerical duties.
- C. **Assessment:** In review of Hernandez parole plans, this counselor does not foresee any problems. However, it was recommended that he obtain updated support letters since his current ones are dated 1998.

V. USINS STATUS: N/A.

VI. SUMMARY:

- A.** Considering the commitment offense, prior prison record and prison adjustment this writer believes Hernandez would pose a low degree of threat to the public if released. Hernandez has been incarcerated for over 25 years on a seven to Life sentence. Hernandez has also been given a parole date twice and both times been revoked by the Governor. Although I have not had alot of interaction with Hernandez throughout the year, he has taken great steps in the right direction. He has remained disciplinary free, has adequate parole plans, and maintains a good rapport with staff and inmates. Hernandez has received laudatory chronos from Correctional Officers W. Cleaver, G. Lavelle and Reverne Lindsey. They state that his work performance, attitude, and attendance are excellent.

Hernandez has taken responsibility for his crime and has expressed deep remorse for what he has done. He fully intends to better himself while incarcerated and will continue working on self-improvement upon his release.

A combination of the above factors, as well as support letters from family and friends, help point Hernandez in the direction of a successful parole.

- B.** Prior to release the prisoner could benefit from:
1. Continuing to be disciplinary free.
 2. Participation in self-help and therapy programs.
- C.** This report is based upon a thorough review of the inmate's Central File and a (1) hour interview with Hernandez.
- D.** Per the Olson Decision, Hernandez was afforded an opportunity to review his Central File. (Refer to CDC 128B dated 8/10/04 in the General Chrono Section of the Central File).
- E.** No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

BOARD OF PRISON TERMS

STATE OF CALIFORNIA


LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

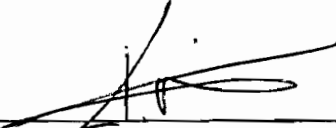
- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING


INSTRUCTIONS

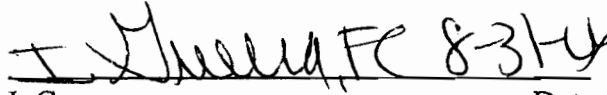
TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

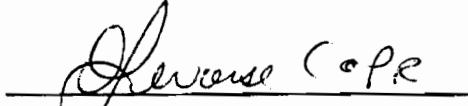
TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
3/04 to 8/04			<p>PLACEMENT: Remained at CTF in the general population.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted this period.</p> <p>ACADEMICS: None noted this period.</p> <p>WORK RECORD: Hernandez was a Religious Clerk from 8/22/02 thru 7/14/04 and received above average ratings verified by CDC 101 dated 1/17/03. On 7/15/04 Hernandez was assigned in the Culinary as a Clerk.</p> <p>GROUP ACTIVITIES: Participated in Prison Fellowship verified by a certificate dated 6/5/04.</p> <p>PSYCH. TREATMENT: None noted during this period.</p> <p>PRISON BEHAVIOR: Hernandez remained disciplinary free during this period.</p> <p>OTHER: None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE 			DATE 8-31-04
HERNANDEZ	C03015	CTF-SOLEDAD	


K. Heintz 8-31-04
Correctional Counselor I Date


D. Pherigo 8-31-04
Correctional Counselor II Date


I. Guerra 8-31-04
Facility Captain Date


D. S. Levorse 9-1-04
Classification and Parole Representative Date